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13 Entertainment Resources LLC

14 UNITED STATES DISTRICT COURT

15 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

16 Complete Entertainment Resources
17 LLC d/b/a Songkick,

18 Plaintiff,

19 v.

20 Live Nation Entertainment, Inc.;
21 Ticketmaster LLC,

22 Defendants.

23 Ticketmaster LLC,

24 Counter Claimant,

25 v.

26 Complete Entertainment Resources
27 LLC d/b/a Songkick,

28 Counter Defendant.

CASE NO. 15-cv-9814 DSF (AGR_x)

FIRST AMENDED COMPLAINT

Jury Trial Demanded

Assigned to The Hon. Dale S. Fischer

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PRELIMINARY STATEMENT

1. Plaintiff brings this action against Defendants for violations of the federal antitrust laws (sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2, and section 7 of the Clayton Act, 15 U.S.C. § 18), violations of the California unfair competition law (section 17200 of the California Business and Professions Code), intentional interference with contractual and prospective economic relations, promissory estoppel, Section 3426 *et seq.* of California’s Uniform Trade Secret Act, New York’s trade secret laws, and Section 1030 of the Computer Fraud and Abuse Act.

2. For decades, Defendant Ticketmaster LLC (“Ticketmaster”) and its predecessor, Ticketmaster Entertainment, Inc., has been the world’s largest and most dominant primary ticketing services company.¹ Today, it has a market share exceeding 80% of ticketing services for major concert venues in the live music industry in the United States,² which has come about by virtue of a web of long-term exclusive dealing agreements with those concert venues. By Defendants’ own count, Ticketmaster provides concert venue ticketing services to over 12,000 venues.

3. On average, only 60% of available tickets to all live music concerts are sold on an annual basis. This is the result of the high fees Ticketmaster imposes on the tickets it sells and poor marketing from Defendants, resulting in decreased demand for live music concerts. Notwithstanding this and concertgoers’ general distaste for Ticketmaster (because of its high service fees), the company has continued to flourish by: securing its long-term exclusive dealing contracts with concert venue operators; acquiring, merging with, or destroying rivals; tying undesired services to services and/or markets in which it has market power; and unfair and anticompetitive acts aimed

¹ “Primary” ticketing refers to the initial distribution of tickets for a show. This is as compared to “secondary” ticketing, which refers to the resale of previously-purchased tickets, typically at a higher price. Secondary ticketing is often more colloquially referred to as “scalping.”

² As used in this complaint, “major concert venues” refers to the top 500 revenue generating venues in the United States as reported by Pollstar.

1 at eliminating and/or minimizing all competitors (including Plaintiff).

2 4. This dominance was greatly strengthened and expanded by Ticketmaster's
3 recent merger with Defendant Live Nation Entertainment, Inc. ("Live Nation"), the
4 largest concert promotion company in the world. In the United States alone, Live
5 Nation controls more than 60% of the concert promotion services market and it
6 promoted 22 of the top 25 global tours in 2014. As a result of the merger, within the
7 past four years, Ticketmaster has used Live Nation's market power (with Live Nation's
8 active assistance, and under its direction and control) to enhance and expand its own
9 market power.

10 5. Before the two companies combined, Live Nation sought to compete with
11 Ticketmaster and reduce the latter's market power in concert venue ticketing services.
12 At the time, Live Nation owned or controlled numerous major concert venues in the
13 United States, and the events it promoted represented over 60% of all United States
14 major live music concerts. In an effort to break Ticketmaster's monopoly power in
15 concert venue ticketing, Live Nation established its own concert venue ticketing service
16 for both its own and other venues, and began to compete directly against Ticketmaster
17 in that space. Almost overnight, Live Nation became the second-largest concert venue
18 ticketing service provider in the United States. To remove that significant competitive
19 threat to its monopoly power, Ticketmaster announced its plans to merge with Live
20 Nation only months after Live Nation entered the market.

21 6. The merger of Ticketmaster and Live Nation not only removed Live
22 Nation as a threat to Ticketmaster's monopoly power, but enhanced that dominance by
23 creating a vertically integrated monopoly with dominant market power in multiple
24 segments of the live music industry, including concert venue ticketing services (where
25 Ticketmaster has over 80% of the market), artist presale ticketing services (where
26 Ticketmaster also has approximately 80% of the market), concert promotion services
27 (where Live Nation has over 60% of the market), concert venue ownership and
28 management (where Live Nation owns, controls, or manages numerous major concert

1 venues in the United States), and artist management (where Live Nation is the largest
2 manager in the world, with over 280 artists under its control, including many of today's
3 most recognizable acts). The merger thus combined the largest and second-largest
4 concert venue ticketing services companies, the largest and second-largest artist presale
5 ticketing services companies, the largest concert promotion company, the second-
6 largest owner and manager of concert venues, and a leading artist management
7 company.

8 7. Plaintiff Complete Entertainment Resources LLC (formerly d/b/a
9 CrowdSurge, now d/b/a Songkick) ("Songkick"), through its Songkick-branded website
10 and mobile applications and its white label technology, is a leading platform for concert
11 "discovery" (*i.e.*, informing fans about newly-announced and upcoming concerts) and
12 artist presale ticketing services, which are specialized ticketing services that help artists
13 sell tickets directly to fans before tickets are put on general sale. For decades prior to
14 Ticketmaster and Live Nation's merger, concert venue operators allocated artists a
15 percentage of the venue's concert ticket inventory to sell directly to the artist's most
16 engaged fans before tickets were put on "general sale" by Ticketmaster or competing
17 services.³ This "artist presale" has long been a distinct type of ticket sale, and artist
18 presale ticketing services are themselves distinct from other types of primary ticketing
19 services.

20 8. The artist presale has been embodied as standard industry practice. As
21 Ticketmaster has publicly admitted, "Our contract permits our clients [concert venues
22 and concert venue operators], and with their consent the acts working with them, to
23 hold back tickets for legitimate promotional purposes with the understanding that these
24 tickets will not be sold to the general public by any other ticketing provider," and that
25 "under many written agreements between promoters and our clients, the client often
26

27 ³ For the vast majority of major concert venues, Ticketmaster was and is the
28 primary ticketing service provider contracted to conduct these general sales.

1 allocates certain tickets for artist, promoter, agent and venue use and does not make
2 those tickets available for sale by us.” Speaking to the commercial rationale for these
3 “artist presale allocations” (also sometimes called “artist holdback allocations”),
4 Ticketmaster has also admitted that “[d]uring the course of dealings with our clients, we
5 have come to understand that some holdbacks must be tolerated by Ticketmaster so that
6 they may book high caliber acts at the events they promote.”

7 9. Artists use these presales for a variety of reasons, including promotional
8 and marketing purposes, and—by not charging the same high service fees as
9 Ticketmaster—typically sell their artist presale allocations at lower net prices than fans
10 face in the general sale. Artist presales generate several benefits for artists, including
11 (among other things) helping the artist grow their database of fans and learn more about
12 the fans buying their tickets; rewarding their most engaged fans for their continued
13 support with first access to tickets; generating “buzz” and demand for their shows by
14 offering tickets from an artist-branded site that does not include supracompetitive
15 service fees; preventing scalping by targeting sales to artists’ most engaged fans;
16 driving revenue by bundling music, merchandise and VIP experiences alongside
17 tickets; raising money for charity; and creating greater awareness for the artists’
18 concerts through bespoke, creative, artist-branded marketing opportunities.
19 Additionally, marketing by the promoter and concert venue ticketing service provider
20 (e.g., Ticketmaster) often does not reach fans, meaning that many fans may not know
21 that an artist will be performing at a venue in their area. Thus, artist presales provide an
22 important additional marketing and sales channel that can help fill seats that may
23 otherwise go empty and more broadly help market an artist’s tours. Artist presales also
24 generate meaningful consumer data (email addresses, demographic information,
25 consumption behavior, etc.) for the artist regarding their fan base. Artist presale
26 ticketing service providers (such as Songkick) share such fan consumer data with their
27 artist-clients to aid them in their future marketing efforts, but concert venue ticketing
28

1 service providers have historically refused to share much, if any, of that consumer data
2 with the artists.

3 10. As an artist presale ticketing services provider, Songkick helps artists offer
4 artist presales to fans, and designs bespoke direct-to-fan marketing strategies to excite
5 the audience for such presales. Songkick also streamlines the artist presale purchasing
6 process by building what it believes to be the best-in-class ticket stores within artist-
7 clients' websites, executes on merchandise upselling and charitable giving initiatives
8 for its artist-clients alongside presales, and generates substantial email leads before a
9 presale even begins through a variety of registration ("data capture") tools and fan-
10 engagement applications.

11 11. Unlike Ticketmaster, which has sought to link its primary ticketing
12 services to its secondary ticketing services (*i.e.*, scalping) businesses (TicketExchange,
13 TicketsNow, TM+, and Verified Tickets, among others), Songkick has developed a
14 suite of data analytics and proprietary, patent-pending technologies designed to help
15 artists prevent scalping and ensure tickets are purchased by their most engaged fans.
16 Artists' use of these analytics and proprietary technologies increases the likelihood that
17 concerts will be more fully attended by the artist's dedicated fans while at the same
18 time saving them significant money and generating for the artist the targeted, functional
19 consumer data mentioned above.

20 12. Since its inception, Songkick's popularity has grown because it offers
21 better artist presale ticketing and marketing services than any other company (including
22 Ticketmaster). Songkick has grown so popular that, in 2014 alone, it worked with over
23 150 premier artists on more than 3,000 shows. Songkick's clients include a wide
24 variety of today's most recognizable music artists.

25 13. Within the past four years, Defendants have begun using their post-merger
26 monopoly power to stifle that competition. Unlike before the merger (when it put
27 artists and maximizing ticket sales first), today's Live Nation now wants to help its
28 subsidiary, Ticketmaster, avoid competitive artist presales and keep all ticket sales on

1 the high-priced Ticketmaster platform. Before the merger, Ticketmaster was pressured
2 by artists and promoters (including Live Nation) into reluctantly tolerating competition
3 in the artist presale space because Ticketmaster was motivated to keep “high-caliber
4 acts” in its contracted venues rather than see them diverted to non-Ticketmaster venues.
5 Similarly, pre-merger, Live Nation took advantage of artist presales because they
6 improved aggregate ticket sales for Live Nation’s promoted shows and put competitive
7 pressure on Ticketmaster. Following the merger and the changes in the competitive
8 dynamic between the companies that it created, Live Nation completely reversed its
9 position on artist presales and Ticketmaster became much more aggressive in
10 preventing competitors from entering or thriving in the market. This change only
11 occurred within the past four years, but it stems directly from the companies’ now joint
12 incentives to maintain Ticketmaster’s market power to the exclusion of competition and
13 all competitors.

14 14. Defendants have also recently attempted to aggressively grow
15 Ticketmaster’s secondary ticketing platforms. These attempts have been mostly
16 successful—Ticketmaster’s secondary ticketing volume grew 50% in 2014. The FTC
17 intervened to prevent Ticketmaster from moving concert ticket buyers from its primary
18 to secondary platform (*i.e.*, by implying tickets offered at much higher prices than their
19 face value were primary, as opposed to secondary, ticket sales). Songkick’s artist
20 presales combat Ticketmaster’s deceptive practices and sharply reduce scalping.

21 15. Within the past four years, Defendants have attempted to destroy
22 competition in the artist presale ticketing services market in a number of different ways.
23 For one, Defendants intentionally created artificial barriers in the artist allocation and
24 presale process and thereby sought to dissuade—and succeeded in blocking—numerous
25 artists from exercising their right to conduct artist presales and/or using Songkick’s
26 services in connection with such sales. Using their monopoly power, Defendants also
27 tried to force Songkick and/or its artist-clients to agree to fix service fees for artist
28 presale tickets at the same price Ticketmaster charged or at a fee amount dictated by

1 Ticketmaster. On multiple occasions, Ticketmaster stated that it would allocate
2 Songkick's artist-clients their artist presale allocations only if Songkick agreed to
3 charge at least Ticketmaster's dictated service fee and pay such fee to Ticketmaster. If
4 successful, these demands would have had the effect of increasing the all-in price of the
5 artist presale tickets to be the same or more than general sale tickets.

6 16. Defendants have also exploited their monopoly power to interfere with and
7 intimidate venues into abandoning past practices of supplying artist presale allocations
8 if artists select non-Ticketmaster ticketing services to sell those allocations. Leveraging
9 Live Nation's roles as artist manager and/or guarantor of billions of dollars to the artists
10 it promotes, Defendants have also coerced artists to permit Ticketmaster—and only
11 Ticketmaster—to sell their artist presale allocations, despite the artists' preference to
12 have someone other than the monopolist Ticketmaster provide the artist presale
13 ticketing services for those allocations. Defendants have also recently begun using
14 their unique multi-level leverage (which arose from their merger) to prevent artists from
15 using Songkick's competitive services, and to tie (1) Live Nation's concert promotion
16 services, Live Nation's artist management services, Ticketmaster's concert venue
17 ticketing services, and/or use of the venues Defendants own, manage, and/or control; to
18 (2) the artists' use of Ticketmaster's own artist presale ticketing services (recently
19 rebranded as Ticketmaster's "OnTour" division).

20 17. Defendants' anticompetitive acts have increased and today threaten not
21 only continued competition from Songkick, but the entirety of competition within the
22 artist presale ticketing services market. Michael Rapino, Live Nation's CEO and
23 Director, has admitted that artists today make 95% of their income from live music
24 events and that Live Nation is now the "largest single financier" of artists worldwide
25 (more than record companies). Armed as he is with this power over artists' careers, Mr.
26 Rapino has used this position to intimidate artists into using Ticketmaster over any
27 other artist presale ticketing service. Indeed, Mr. Rapino made several threats to
28 withhold Defendants' services if artists insisted on using Songkick's artist presale

1 ticketing services. He also told several artists that they could not take a single ticket off
2 of the Ticketmaster system, period, and at least one artist that hurting Ticketmaster was
3 like hurting Live Nation itself. He has stated that he does not want “companies like
4 CrowdSurge coming in and taking our tickets,” and has acted accordingly.

5 18. No artist has been safe from these threats and anticompetitive acts. As just
6 one example, in early 2014, a global superstar whose identity will be disclosed once a
7 protective order is in place announced an artist presale for a concert for which Songkick
8 was the artist presale ticketing service provider. Later that day, that artist’s promoter
9 discovered that the show was not being featured as expected on Ticketmaster’s website,
10 and submitted an inquiry to Ticketmaster, the concert venue ticketing service provider
11 for that event, as to why the marketing had been withheld. Ticketmaster responded,
12 “[A]rtists/tours who keep 100% of their tickets on the TM platform are able to unlock
13 the home page placement marketing asset...we will not be able to offer homepage
14 placement for [the artist’s] tour at this time.” That artist had one of the biggest music
15 tours of 2014, grossing over \$100 million and performing for hundreds of thousands
16 fans worldwide. Despite the fact that Ticketmaster was the concert venue ticketing
17 service provider for the majority of this artist’s United States concerts, Ticketmaster
18 refused to provide prominent marketing for the artist’s show on the ticketmaster.com
19 website because the artist used Songkick as its artist presale ticketing service provider.
20 Thus, Ticketmaster sacrificed its own profits in order to punish the artist for doing
21 business with a competitor. Ticketmaster and Mr. Rapino’s anticompetitive acts went
22 so far that, in the summer of 2015, they told the artist that it did not have a “legitimate”
23 fan club and therefore could not use Songkick for artist presale ticketing services. This
24 was an absurd claim. The artist’s fan club membership runs into the hundreds of
25 thousands and is a longstanding club.

26 19. Songkick has for years sought reasonably and in good faith to reach a
27 resolution with Ticketmaster and Live Nation, but, despite assurances to the contrary by
28 senior Defendant executives that artists who utilized CrowdSurge/Songkick for their

1 artist presales would not be punished by Defendants, and that Defendants' fan club
2 policy (described below) would be applied uniformly to both Songkick and
3 Ticketmaster in order to provide a level playing field, Defendants engaged in the
4 predatory acts herein to monopolize, attempt to monopolize, unfairly compete, and
5 interfere with Songkick's ability to provide the artist presale ticketing services that
6 today's artists and their fans demand.

7 20. Finally, in documents produced in discovery, Songkick has recently
8 learned that Defendants have, through a former CrowdSurge Senior Vice President,
9 intentionally and without authorization accessed CrowdSurge's protected computers
10 and improperly acquired and used CrowdSurge's trade secrets and confidential
11 information, including: a suite of proprietary service offerings; financial information,
12 such as ticket sales, merchandise revenues, quarterly profitability, and forecasts of
13 various kinds; cost and pricing data; customer information; and other non-public
14 information of economic value. Upon information and belief, Ticketmaster used this
15 information in order to revamp its unsuccessful Artist Services division into a clone of
16 CrowdSurge, called Ticketmaster OnTour.

17 **PARTIES**

18 **A. Defendants**

19 21. Defendant Live Nation Entertainment, Inc. is a Delaware corporation with
20 its principal place of business at 9348 Civic Center Drive, Beverly Hills, California
21 90210. Live Nation is the largest live entertainment company in the world, connecting
22 nearly 519 million fans across all of its platforms in 33 countries. Live Nation states on
23 its website that it "annually issues over 450 million tickets, promotes 23,000 events,
24 partners with over 750 sponsors and manages the careers of 280+ artists." Live
25 Nation's 2014 revenues were approximately \$6.87 billion, but nearly 60% of its
26 adjusted operating income came from Ticketmaster (even though Ticketmaster
27 represented only 23% of Live Nation's revenues).

22. Defendant Ticketmaster LLC is today a wholly-owned subsidiary of Live Nation Entertainment, Inc. Ticketmaster is a limited liability company organized and existing under the laws of Virginia with its principal place of business at 7060 Hollywood Boulevard, Hollywood, California 90028. Ticketmaster LLC is the successor in interest to Ticketmaster Entertainment, Inc., a Delaware corporation, and is the largest ticketing company in the United States and the world, with 2014 revenues of approximately \$1.55 billion and a gross profit margin exceeding 50%. As discussed further below, Ticketmaster's business includes two main arms: its legacy concert venue ticketing services business and a newer, but steadily-growing, secondary ticketing service business. Ticketmaster also has several additional divisions that provide ancillary services to these ticketing businesses. In performing the anticompetitive acts herein alleged, Ticketmaster acted as the agent of; under the direction and control of; and in coordination with Defendant Live Nation and its senior-most executives.

23. After Live Nation and Ticketmaster merged in an all-stock transaction, the resulting company reorganized into the following four divisions:

(a) In its Concerts division, Live Nation acts as a promoter. It and AEG Live are the only promoters that can operate on a United States national and global scale. Live Nation often serves as the exclusive promoter for artists on national tours, and uses cross-collateralization across concerts and its deep pockets, including operating profits from its Ticketmaster and sponsorship divisions, to routinely offer artists higher guaranteed compensation than its only other national competitor, a company called AEG Live.⁴ Live Nation has over 60% of the concert promotion services market. Revenue streams from this division are numerous and significant, but

⁴ The Anschutz Entertainment Group (AEG) is an American worldwide sporting and music entertainment presenter and a subsidiary of The Anschutz Corporation. AEG owns a variety of major concert venues throughout the U.S. that compete with Live Nation and third party-owned concert venues for major live music concerts. AEG Live is AEG's promotion arm for live music concerts.

1 margins are below cost or very thin. (Adjusted operating margins for 2014 were 1%.)
2 Live Nation's promoted artists obtain the vast majority of the Concerts division's
3 revenue.

4 (b) By contrast, Live Nation's Ticketing division (*i.e.*, Ticketmaster) is
5 highly profitable with gross profit margins exceeding 50%. This division primarily
6 consists of the legacy Ticketmaster business, which focuses on primary ticket sales.
7 Ticketmaster sells tickets to the public under contract with the venues, and earns service
8 and other ancillary fees on the sale of each ticket. Ticketmaster also has a growing
9 secondary ticketing marketplace, with \$1 billion of gross transaction value in 2014
10 (50% growth from 2013) in a market currently worth approximately \$8 billion. This
11 high-margin secondary ticketing business has provided an additional income stream for
12 Ticketmaster on the same shows for which it sells primary tickets. This means
13 Ticketmaster can generate revenues two or more times on the exact same tickets.
14 Ticketmaster also maintains a database containing the contact information of over 130
15 million customers, a valuable resource that it has generally refused to provide to the
16 very artists who create the demand that drives ticket sales.

17 (c) Live Nation's Media & Sponsorship division leverages the 60
18 million or so fans Live Nation draws to its shows, the 130 million names in its
19 Ticketmaster database, their stable of managed and promoted artists, and the venues
20 they control to sell targeted advertising to major companies. In 2014, this division
21 generated adjusted operating profit of \$213 million on revenue of \$300 million—a 71%
22 operating margin.

23 (d) Through its Artist Nation division, Live Nation also provides
24 management services to artists in exchange for a commission on these artists' earnings.
25 This division also manages the licensing and production of merchandise, and its sale
26 online and at concerts.

27 24. In 2014, Live Nation's Ticketing and Media & Sponsorship divisions
28 generated only 27% of the company's revenues, but over **90%** of its adjusted operating

1 income. As discussed herein, Songkick and other artist presale ticketing service
2 providers directly cut into these two profit streams, which are Live Nation's most
3 valuable.

4 **B. Plaintiff**

5 25. Plaintiff Complete Entertainment Resources LLC d/b/a Songkick is
6 organized under the laws of Delaware with its principal place of business at 45 Main
7 Street, Brooklyn, New York 11201. Complete Entertainment Resources LLC became a
8 wholly-owned subsidiary of Songkick.com B.V. following the merger of equals
9 between Songkick and CrowdSurge, which occurred in June 2015 (discussed further
10 below). Before that merger, Complete Entertainment Resources LLC did business as
11 CrowdSurge. CrowdSurge merged with Songkick and the merged company assumed
12 the latter's name. In this complaint, the term "CrowdSurge" refers to the pre-merger
13 Complete Entertainment Resources LLC entity. References to "pre-merger Songkick"
14 refer to the company with which CrowdSurge merged in June 2015. "Songkick" refers
15 to the present day merged company and to Complete Entertainment Resources LLC in
16 general, when allegations relate to both pre- and post-merger facts.

17 26. CrowdSurge (and, now, Songkick) offers artists the means to sell tickets
18 for their concerts directly to their fans in a manner that provides substantial,
19 longstanding benefits to the artist and to concertgoers. The company opened its first
20 United States office in 2011. Unlike that of a company primarily focused on venue
21 ticketing services, CrowdSurge's (and, now, Songkick's) goal has always been to
22 deliver value to the artist by creatively using technology to: (a) grow and help artists
23 better understand their fan base, (b) market concerts to increase ticket sales, primarily
24 by leveraging artists' own websites (using CrowdSurge's white label ecommerce
25 solution) and other distribution channels (*e.g.*, social media); (c) reduce scalping,
26 including through the use of proprietary, patent pending technology, (d) help artists
27 develop their brands and connect with fans; (e) generate consumer data through direct-
28 to-fan artist ticket presales so that the artist develops the ability to directly connect with,

1 and market to, its fans over the long term; and (f) leverage fan data to help artists
2 pinpoint demand and route world tours. The thesis underlying Songkick's business is
3 that artists are their own best marketers. Songkick empowers artists with data, design,
4 branding, and marketing services to maximize their touring revenues and increase their
5 independence from third parties such as Live Nation and Ticketmaster. Part of this
6 empowerment involves the activation of all of the artists' online "channels," including
7 their websites, mailing lists, social media pages, etc. Notably, CrowdSurge was one of
8 the first to develop the technologies to enable ticket sales through music streaming and
9 social media platforms such as Facebook.

10 27. Traditional concert venue ticketing service providers, most notably the
11 monopolist Ticketmaster, typically resist sharing ticket purchaser data with artists.
12 Songkick, which always provides such data to the artist, thus distinguishes itself by
13 being truly artist-focused and by actively working with artists to leverage such data and
14 to provide them with the marketing and promotional tools to help them develop their
15 careers and independence through more efficient means of identifying and
16 communicating with their core audience.

17 28. Pre-merger Songkick began as an innovative service that notified users
18 about upcoming and newly-announced concerts in their area that they would likely be
19 interested in attending. Specifically, users share their music interests, or allow
20 Songkick to search their music streaming and download histories, so that Songkick can
21 develop a library of data about each user's individual musical preferences. Songkick
22 then uses this library to identify concerts that should be of interest to the user and sends
23 announcements to the user about upcoming or newly-announced shows in relevant
24 geographic areas. Songkick also powers concert discovery services and listings for
25 several major online music platforms, including Spotify, MTV, and SoundCloud.
26 While artists, promoters, concert venue operators, and concert venue ticketing service
27 providers would all benefit from such a service, none existed in a fan- or user-friendly
28 format before pre-merger Songkick arrived. Since its formation, the company

1 continued to grow and today provides one of the best lead generators for concert venues
2 and artists, with approximately 10,000,000 unique fans on a monthly basis.

3 29. In June 2015, CrowdSurge and pre-merger Songkick brought together their
4 two services into one company. As one of the main music industry publications,
5 *Billboard*, put it, “Concert discovery and ticket sales go together like peanut butter and
6 jelly – at least for Americans. The 50/50 merger of Songkick and CrowdSurge,
7 announced Thursday, should make finding and buying concert tickets much easier.” In
8 response to a perceived threat from this merger, Ticketmaster has escalated its efforts to
9 remove Songkick as a competitor to preserve and enhance its monopoly of both the
10 artist presale ticketing services market and the concert venue ticketing services market.

11 30. The merged Songkick’s offering, which allows artists to control how and
12 where their artist presale tickets are sold to their fans (whether on their own websites,
13 on social networking sites, on Songkick.com and its mobile applications or via
14 streaming services), has captivated the artist community and obtained approximately
15 15% of the market for artist presale ticketing services, in spite of the predatory and
16 anticompetitive actions of Ticketmaster and Live Nation. Live Nation’s CEO and
17 Director, Michael Rapino, has recognized that this approach to ticket sales is the future
18 of the industry. As he admitted to the U.S. Senate Subcommittee on Antitrust,
19 Competition Policy and Consumer Rights when he sought to merge Live Nation with
20 Ticketmaster in 2010, the future of the ticketing industry is “a world in which a fan
21 doesn’t have to go to Ticketmaster or any other single source or portal to purchase
22 tickets. Instead they can buy them anywhere the artist wants to make them available—
23 a proprietary fan site, a social networking site, a TV show tie-in site, a grocery store,
24 wherever.” This is exactly the worldview that Songkick seeks to implement (and the
25 service it provides), and which Mr. Rapino, enriched as he, Live Nation, and
26 Ticketmaster have been post-merger, seeks to prevent Songkick and other competitors
27 from achieving.

JURISDICTION AND VENUE

31. Songkick brings this action under Sections 4 and Section 16 of the Clayton Act, 15 U.S.C. §§ 15 and 16, for violations of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2, and Section 7 of the Clayton Act, 15 U.S.C. § 18. This Court has subject matter jurisdiction over this claim pursuant to 28 U.S.C. §§ 1331 and 1337.

32. Songkick also brings this action for violations of the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.* Songkick further brings this action under state law for intentional interference with contractual and prospective economic relations, as well as promissory estoppel.

33. This Court has supplemental jurisdiction over these pendant state law claims under 28 U.S.C. §§ 1332(d) and 1367 because the claims arise from the same nucleus of operative facts as the federal antitrust law claims.

ADDITIONAL FACTS

General Background on the Live Music Industry

34. As pertinent to this case, the components of the live music entertainment industry include the following:



35. Artists are the draw for a live music event and drive demand for the services of every subsequent link and participant in the live music industry chain. Without artists, there is no live music industry.

36. An artist manager serves as the “CEO” of an artist’s business activities, advising in some or all phases of the artist’s professional life (tours, appearances, recording deals, publicity, endorsements, etc.). Managers often are compensated based on a share of all of the artist’s revenues or profit streams. Defendant Live Nation is currently the largest manager of artists in the music industry.

1 37. The artist manager often hires booking agents to assist in arranging a
2 concert event or tour. The manager or booking agent contracts with promoters, such as
3 Live Nation, to secure payment terms for artists as compensation for their live
4 performances. Agents are typically paid a portion of an artist's receipts from live
5 performances.

6 38. The promoter is responsible for promoting the concert to the public, which
7 requires several different types of work. The promoter typically receives the proceeds
8 from gross ticket receipts for each concert it promotes and is responsible for paying the
9 artist, venue, and other expenses associated with the event. For example, the promoter
10 hires the artist for the performance (often guaranteeing more popular artists millions of
11 dollars for that performance or a national tour), generally contracts with the venue (or
12 uses its own venues), pays the concert venue operator a fixed fee (rental payment) to
13 host the concert at the venue, arranges for local production services, and advertises and
14 markets the concert. The promoter bears the downside risk of an event if tickets sell
15 poorly and reaps the upside benefit with the artists if tickets sell well. Put simply, the
16 more tickets a promoter is able to sell for a show, the more money the promoter (and
17 artist) should make. Defendant Live Nation is the largest promoter in the United States,
18 with over 60% of the concert promotion services market.

19 39. Concert venue operators provide access to and maintain the facilities
20 where concerts are held and oversee the venue's associated services, such as
21 concessions, parking, and security. Along with a rental fee received from the promoter,
22 venues generally take a share of the proceeds from concessions, parking, and artist
23 merchandise sales. Although the fixed fee does not change based on show attendance,
24 the concert venue operator's ancillary revenue streams are tied to the number of patrons
25 who attend the show. By agreement, custom, and practice, concert venue operators
26 (upon request) generally provide an allotment of tickets to artists for presale to fans.
27 Similar to the promoter, the more tickets sold (and the more patrons that attend the
28 venue), the more money the concert venue operator makes.

1 40. In terms of ticket sales, concert venue operators have two options: either
2 manage the sale of primary ticket inventory themselves or contract with a third party to
3 handle the sale process for them. Managing and selling concert venue tickets is
4 technologically and operationally complex, so most concert venue operators choose the
5 latter option and contract with concert venue ticketing service providers (generally
6 Ticketmaster for major concert venues) for comprehensive ticketing solutions. Of
7 particular note for this complaint is that Live Nation is the second-largest concert venue
8 operator/owner in the United States and exclusively utilizes Ticketmaster for these
9 services.

10 41. Concert venue ticketing service providers contract with venues to manage
11 and sell primary ticket inventory for events at that venue. Concert venue ticketing
12 service providers create “back-end” inventory management systems and provide “front-
13 end” support, including customer service, shipping, and fulfillment services, as well as
14 the technology (and staff) to allow concert venue operators to sell tickets through their
15 box offices. The concert venue ticketing service providers sell the primary ticket
16 inventory made available to them through means such as the Internet, call centers, and
17 retail outlets and/or help the venue sell tickets at its box office. Ticketmaster’s
18 historical role has been that of a concert venue ticketing service provider for “general
19 sale” tickets (*i.e.*, primary tickets sold to the general public beginning on a specified
20 date and concluding at the time of the live show). This is distinguished from artist
21 presale ticketing services for sales of artist presale tickets to fans, which take place
22 before general sale tickets are offered to the public, and secondary ticketing services,
23 the latter of which facilitate the resale of previously-purchased tickets. Today,
24 secondary ticketing services have progressed from scalpers standing outside a venue
25 before a show to sophisticated online marketplaces, the largest of which are StubHub
26 and Ticketmaster’s own TicketExchange / TicketsNow / TM+ / Verified Tickets
27 platforms.
28

1 42. Concert venue ticketing service providers generate profits by applying
2 additional charges to the price of tickets. The overall price a consumer pays on a
3 primary ticket purchase therefore generally includes the “face value” of the ticket
4 (which is set by the artist and promoter), as well as a variety of service fees on top of/in
5 addition to the face value of the ticket. As noted, these fees are generally charged and
6 retained by the concert venue ticketing service provider, although they may be split
7 with other parties, including the concert venue operator. Typically described as
8 “convenience,” “processing,” “service,” “facility,” and/or “delivery” fees, these service
9 fees can constitute a substantial portion of the overall cost of the ticket to the consumer.

10 43. Substantially all of the nation’s major music concert venues have entered
11 into long-term exclusive agreements with concert venue ticketing service providers—
12 over 80% with Ticketmaster—whereby the ticketing service provider contracts for the
13 exclusive rights to a portion of all primary ticket sales for all events held at the venue.
14 Ticketmaster has long-term exclusive dealing agreements with at least 80% of the top
15 arenas and amphitheaters in the United States. By Defendants’ own count,
16 Ticketmaster provides concert venue ticketing services to over 12,000 venues and has a
17 renewal rate “exceeding 100%,” because there is no effective competition to
18 Ticketmaster when these long-term exclusive dealing contracts expire.

19 44. According to Ticketmaster, its agreements with concert venues have terms
20 that may exceed ten or more years in length. In order to induce concert venue
21 owners/managers to enter into such exclusive dealing agreements, Ticketmaster offers
22 up-front payments and other subsidies that can run into the millions of dollars that are
23 conditioned on such exclusivity. Those up-front payments act as a barrier to entry for
24 smaller competitors and act as an additional mechanism to maintain Ticketmaster’s
25 dominance.

26 **Defendants’ Market Power in the Live Music Industry**

27 45. As previously noted, Ticketmaster has dominated concert venue ticketing
28 for decades, dominance that has increased over the past four years in part because of the

1 merger with Live Nation. Other companies have sought to compete against
2 Ticketmaster for primary ticketing to concert venues over the years, but none have been
3 successful because Ticketmaster either acquired them, drove them out of business, or
4 minimized their market share through a variety of tactics. In 2014, Ticketmaster's
5 share of concert venue ticketing services in the United States exceeded 80% among
6 major concert venues and, as noted, its market power is growing as a result of renewals
7 and extensions of existing agreements.

8 46. High market shares are not the only indicators of Ticketmaster's market
9 power. Ticketmaster's revenues are much greater than those of the next several largest
10 concert venue ticketing service competitors combined, and its gross profit margins
11 exceed 50%. (Even Live Nation's competing concert venue ticketing business was
12 only ever a fraction of the size of Ticketmaster's before the two companies merged.)
13 Moreover, although a small number of other concert venue ticketing competitors
14 attempt to compete against Ticketmaster for primary ticketing rights at venues not
15 controlled by Defendants, Defendants have boasted that, for every year since
16 Ticketmaster and Live Nation merged, Ticketmaster's net renewal rate with venues has
17 been "**over** 100%." In other words, since it merged with Live Nation, Ticketmaster has
18 increased its market share and dominance every single year. It now counts over 12,000
19 venues as clients, compared to "only" 10,000 prior to the merger, an increase of 20% in
20 five years.

21 47. Before its merger with Ticketmaster, Live Nation was the world's largest
22 promoter of live concerts. The company continues to hold that title today. Live
23 Nation's Concerts business principally involves the promotion of live music events at
24 concert venues throughout the world, although its largest footprint is in the United
25 States. Live Nation is also the second-largest owner or manager of concert venues and
26 owns, leases, operates, has booking rights for, or has equity interests in over 110 live
27 entertainment venues of various sizes in the United States.

1 48. Before the merger, Live Nation had been using Ticketmaster as its concert
2 venue ticketing service provider and was one of Ticketmaster's largest customers. In
3 late 2006, Live Nation (run then, as now, by Mr. Rapino) concluded that it would be
4 better served by entering the concert venue ticketing service business itself. Live
5 Nation believed that, as the nation's foremost concert promoter, its prominence would
6 give it immediate access to the concert venue ticketing services market.

7 49. That is exactly what happened. Shortly after rolling out its concert venue
8 ticketing service strategy in 2008—which involved (a) licensing ticketing software
9 from CTS Eventim, the leading German concert venue ticketing service provider, for
10 both Live Nation and third party venues to use within the United States, and (b)
11 engaging in price competition with Ticketmaster on ticket service fees—Live Nation
12 became the second-largest provider of concert venue ticketing services in the United
13 States almost overnight (by signing up both itself *and* the largest venue operator of the
14 time, SMG).

15 50. In order to protect and preserve its monopoly power in concert venue
16 ticketing services and to remove Live Nation as a competitor, Ticketmaster decided to
17 merge with Live Nation. The U.S. Department of Justice, California, and sixteen other
18 states disagreed that this was permissible and, in January 2010, sued to block the
19 merger between Ticketmaster and Live Nation. The primary concern expressed in the
20 complaint was that the merger would eliminate competition and innovation in the
21 market for concert venue ticketing services (defined in the complaint as “primary
22 ticketing services”), by eliminating Live Nation as a competitor of Ticketmaster. To
23 reduce the government's concerns, Defendants entered into a consent judgment. That
24 judgment, however, did not address artist presale ticketing services. Moreover, the
25 merger's anticompetitive effects on the market for artist presale ticketing services did
26 not occur or become apparent until the past four years, when Defendants began their
27 joint campaign against competition in that market as herein alleged.

28

1 51. Today, as a result of the merger, Defendants have acquired unparalleled
2 dominance within the live music industry. Ticketmaster provides the vast bulk of
3 concert venue ticketing services in the United States, just as it has for decades. Post-
4 merger, however, Ticketmaster is perfectly aligned with (and owned by) Live Nation,
5 the largest concert promoter in the United States, whose market power has been used to
6 preserve and enhance Ticketmaster's monopoly power in both concert venue ticketing
7 services and artist presale ticketing services. Whereas, pre-merger, Ticketmaster
8 needed to be cognizant of promoters and artists taking business away from
9 Ticketmaster's contracted venues, that concern has now disappeared because the post-
10 merger Live Nation business promotes, manages, and/or hosts concerts for most of the
11 biggest acts that tour in the United States—*i.e.*, the artists that Ticketmaster and its
12 venue clients most care about. Indeed, as herein alleged, Live Nation has had no
13 qualms pushing Ticketmaster's services on artists and venues alike. Similarly, Live
14 Nation has directly participated in, encouraged, aided, and facilitated Ticketmaster's
15 anticompetitive activities.

16 52. Using a measure of market concentration called the Herfindahl-Hirschman
17 Index ("HHI"), the post-Live Nation and Ticketmaster merger HHI for venue ticketing
18 services increased by over 2,190 points, resulting in a post-merger HHI of over 6,900.
19 The U.S. Department of Justice considers any market with an HHI of more than 2,500
20 to be highly concentrated. If Ticketmaster is successful in its quest to destroy
21 competition in the artist presale ticketing services market (such as those provided by
22 Songkick), the HHI would rise even higher, to nearly single-competitor—*i.e.*, pure
23 monopoly—levels.

24 53. The merger of Ticketmaster and Live Nation has had at least the following
25 additional effects:

26 (a) actual and potential competition between Ticketmaster and Live
27 Nation in the provision and sale of concert venue ticketing services has been
28 eliminated;

1 (b) competition generally in the market for concert venue ticketing
2 services has been substantially lessened since the remaining competitors have lost
3 market share in favor of the monopolist Ticketmaster; and

4 (c) competition generally in the market for artist presale ticketing
5 services has been substantially lessened because Defendants are now able to coerce
6 artists into selecting Ticketmaster's artist presale ticketing services over those of
7 Songkick and other third-party providers through a variety of means alleged herein.

8 54. Defendants' market power thus maximizes market inefficiencies and
9 heavily restricts competition in an industry where Defendants themselves estimate that
10 an average of 40% of tickets go unsold, with industry insiders believing this number to
11 be closer to 50%. Defendants also admit that 80% of Live Nation's shows do not sell
12 out, primarily because fans do not know about the shows. Songkick's goal is to change
13 those statistics, and doing so would benefit nearly every player in the live music
14 industry, artists and concertgoers most of all.

15 **The Market For Artist Presale Ticketing Services**

16 55. As alleged above, Defendants have admitted and agreed that venues have
17 the right to hold back blocks or groups of tickets from the general sale for various
18 parties, including (among others) the concert promoter, record companies, the artist and
19 its management. The tickets that a venue, upon request, holds back for an artist presale
20 are sold by the artist directly to their fans, generally through an artist presale ticketing
21 service provider. Those allocations vary in amount from eight to fifty percent (or more)
22 of the venue's available seats for the artist's concerts.

23 56. Because the widespread practice of artist presale allocations is and has
24 long been industry standard, Defendants have, as alleged herein, repeatedly agreed and
25 acknowledged that the venues with which Ticketmaster contracts have the right to make
26 this allocation to artists. Artists then use their artist presale allocations to conduct an
27 "artist presale," whereby they typically charge fans lower prices than what they would
28 otherwise face in the general sale and try to ensure that these seats go to their most

1 engaged fans. Artists accomplish this by negotiating deals with artist presale ticketing
2 service providers (which typically charge lower service fees than concert venue
3 ticketing service providers).

4 57. Artist presales generally benefit the artist in multiple ways that are not
5 prioritized by concert venue ticketing service providers. For example, the presales
6 generate and deepen goodwill among the artist's biggest fans, which turns into higher
7 ticket sales overall and helps promote a longer musical career. Artist presale tickets are
8 often offered with significantly lower service fees than general sale primary tickets,
9 and, with effective marketing and promotion, also help create demand and "buzz" for
10 the artist's shows. They also help an artist increase revenue through music,
11 merchandise, and VIP package sales, and promote causes and charities the artist favors.
12 Yet another benefit is that the artist can gather consumer data from an artist presale that
13 they can then use to promote their shows and brand in the future without having to rely
14 on third parties, such as Ticketmaster or Live Nation.

15 58. Artist presales are economically unique and distinct from other types of
16 ticket sales for a variety of reasons. Most notably, they differ because the artist sells
17 tickets directly to their fans and does so at a different time than the general sale (*i.e.*,
18 artist presale tickets must be sold before the venue ticketing service provider offers
19 concert tickets in the general sale). Artist presales also involve contracts between the
20 artist and the ticketing services provider rather than between the concert venue and the
21 ticketing services provider. Likewise, artist presales are only available for a discrete
22 amount of time to potential purchasers, which allows the artist to reward its most
23 engaged fans who are following, or who have created a communication channel with,
24 the artist on social media, through a tracking service such as Songkick, or via the
25 artist's mailing list. This promotes the artist's long-term success with its fan base, not
26 merely the success of a particular concert. No general sale tickets are available during
27 an artist presale and no artist presale tickets are available after the general sale begins.

28

1 59. Several other factors also demonstrate the unique and separate nature of
2 artist presale ticketing services (as opposed to concert venue ticketing services and
3 different types of presale ticketing services):

4 (a) *First*, customers for artist presale ticketing services (*i.e.*, artists and
5 their management) recognize the distinction between artist presale ticketing service
6 providers and other types of primary ticketing service providers. Artists, managers,
7 promoters, venues, and primary ticketing service providers themselves (including
8 Ticketmaster) all view artist presales and artist presale ticketing services as separate
9 from general sales and concert venue ticketing services. Indeed, Defendants refer to
10 their own version of artist presale ticketing services as a “specialty ticketing service”
11 and they have noted in documents distributed to artists and other live music industry
12 participants that there is an “important distinction between ‘general public ticketing’
13 and ‘artist fan club ticketing.’”

14 (b) *Second*, all these entities (including Ticketmaster itself) recognize
15 that the artist presale has unique purposes from the general sale and even other types of
16 presales: it rewards the artist’s most engaged fans while acting as a promotional tool to
17 help drive demand for the overall show and further the artist’s career. Artist presale
18 ticketing services help the artist achieve these unique purposes.

19 (c) *Third*, the customers for artist presale ticketing services are distinct
20 from the customers for concert venue ticketing services. The customers for the latter
21 are generally the concert venue operators. The customers for the former are generally
22 the artists. There is very little overlap between these two customer bases, although they
23 are aligned in wanting to sell more tickets for the artist’s shows.

24 (d) *Fourth*, there are distinct pricing models between the two markets.
25 Artist presale ticketing service providers (other than Ticketmaster) typically charge
26 lower fees on artist presale tickets than venue ticketing service providers charge on
27 their allocated tickets, because one of the key reasons for artist presales is to charge
28 lower prices for primary tickets than general sales. Unlike in the general sale, artists

1 can control the service fee charged to fans in the artist presale through their selection of
2 the artist presale ticketing service provider.

3 (e) *Fifth*, demand for artist presale ticketing services is not sensitive to
4 changes in prices for other types of primary ticketing services, because such changes do
5 not cause artists to choose a different set of services. For artists, the point of artist
6 presales (*i.e.*, the economic benefit the artist receives), as outlined above, is to provide a
7 variety of marketing, promotional, and long-term career benefits to the artist. Price
8 changes for other types of ticketing services do not affect these demand drivers for
9 artist presales in any significant way.

10 **Relevant Markets**

11 60. There are at least three relevant product markets applicable to this dispute.
12 The first two are: (1) the market for the provision of marketing and ticketing services
13 for artists before primary tickets are offered in the general sale at major concert venues
14 (the “artist presale ticketing services market”), which is, in the alternative, a separate
15 relevant market or a relevant submarket of primary ticketing services; and (2) the
16 market for the provision of primary ticketing services for a major concert venue’s
17 general sales (the “concert venue ticketing services market”). Songkick and
18 Ticketmaster are competitors in the artist presale ticketing services market.

19 61. Based on the number of tickets Ticketmaster claims to have sold in artist
20 presales, Ticketmaster currently controls at least 80% of the artist presale ticketing
21 services market. Songkick is its largest competitor in this market. As noted herein,
22 Ticketmaster is now seeking to remove Songkick as a threat to its monopoly power in
23 this artist presale ticketing services market, or, alternatively, submarket of primary
24 ticketing services.

25 62. The United States is the relevant geographic scope of both the artist
26 presale and the concert venue ticketing services markets. Concert venue operators
27 purchase concert venue ticketing services from their locations within the United States
28 and look to United States-based service providers to provide the concert venue ticketing

1 services for their shows. Similarly, for artists that make a tour of United States venues
2 and conduct artist presales as part of that tour, they look to artist presale ticketing
3 service providers that are based in, or have locations in, the United States. If artist
4 presale or concert venue ticketing service providers within the United States raised their
5 prices by a small but significant and non-transitory amount, that would not cause their
6 respective types of customers to seek ticketing services from providers based entirely
7 outside of the United States. Furthermore, only ticketing service providers with one or
8 more locations in the United States compete with each other for customers requiring
9 ticketing services at concert venues in the United States or for United States-based
10 concert tours.

11 63. In the alternative, the relevant geographic markets for artist presale and
12 concert venue ticketing services are the sub-national regions from which major concert
13 venues and artists respectively require, purchase, and look for concert venue and artist
14 presale ticketing services. Although Songkick has not yet had the discovery needed to
15 finally define these regions, on information and belief, they include at least the
16 following greater metropolitan and surrounding areas:

17 Birmingham, Alabama
18 Northern California
19 Southern California
20 Hartford, Connecticut
21 Washington, D.C.
22 Miami, Florida
23 Atlanta, Georgia
24 Honolulu, Hawaii
25 Chicago, Illinois
26 Indianapolis, Indiana
27 Louisville, Kentucky
28 New Orleans, Louisiana
Boston, Massachusetts
Portland, Maine
Detroit, Michigan
St. Louis, Missouri
Charlotte, North Carolina
Raleigh, North Carolina
Omaha, Nebraska
Holmdel/Atlantic City, New Jersey
Albuquerque, New Mexico
New York, New York
Cincinnati, Ohio

1 Columbus, Ohio
2 Cleveland, Ohio
3 Oklahoma City, Oklahoma
4 Pittsburgh, Pennsylvania
5 Philadelphia, Pennsylvania
6 Providence, Rhode Island
7 Charleston, South Carolina
8 Memphis, Tennessee
9 Nashville, Tennessee
10 Dallas/Ft. Worth, Texas
11 Austin, Texas
12 Houston, Texas
13 Richmond, Virginia
14 Norfolk/Virginia Beach, Virginia
15 Seattle, Washington
16 Milwaukee, Wisconsin

17 Once afforded further discovery into this issue, Songkick will allege and refine further
18 relevant geographic markets to conform to the proof (including narrowing or
19 broadening them according to the evidence).

20 64. The third relevant product market at issue in this complaint is the market
21 for concert promotion services because, as discussed below, Live Nation uses its market
22 power in that market to force artists to use Ticketmaster's artist presale ticketing
23 services. Artists planning to conduct a national tour often use a single company to
24 provide and/or coordinate promotions for the entire tour. SFX Entertainment, Live
25 Nation's predecessor company, was the first to achieve this feat at scale across the
26 industry by acquiring multiple regional promoters and integrating them into one
27 national organization (while a handful of artists were able to obtain national concert
28 promotion services prior to the SFX consolidation, national concert promotion services
were at that time the exception rather than the rule). The unique, nation-spanning
services such a company provided to artists led them to view SFX (and, later, Live
Nation) as their promoter of choice for concert tours, large and small. Although some
artists still use multiple regional concert promoters for a single national tour, the pre-
SFX *status quo* has been reversed, and this practice is now the exception for larger
artists, rather than the rule.

1 65. Today, Live Nation controls at least 60% of the concert promotion services
2 market. AEG Live is Live Nation's closest competitor, with 21% of the market. Live
3 Nation, however, promotes at least 22 of the top grossing 25 touring acts in the world,
4 and it is the only promoter, national or regional, that has a direct corporate relationship
5 with the nation's most dominant concert venue and artist presale ticketing service
6 provider, Ticketmaster.

7 66. The geographic scope of the concert promotion services market is the
8 United States. Artists look to concert promotion service providers that operate within
9 the United States in order to put on any leg of a concert tour in the United States. Live
10 Nation and AEG Live have promotion networks established throughout the country and
11 are considered viable alternatives to promoters with a more regional focus.
12 Accordingly, even if an artist is focused on conducting a concert tour in only a limited
13 region of the United States, the alternatives from which they can choose for concert
14 promotions services are national.

15 67. In the alternative, the relevant geographic markets of the concert
16 promotion services market are the sub-national regions in which artists require,
17 purchase, and look for promoters to provide promotion services for one or more legs of
18 a concert tour. Although Songkick has not yet had the discovery needed to finally
19 define these regions, on information and belief, they include at least the following
20 regions:

21 Pacific Northwest
22 Northern California
23 Southern California
24 Intermountain West
25 Southwest
26 Upper Midwest
27 Lower Midwest
28 Texas
 Ohio Valley
 New England
 Tri-State
 Pennsylvania
 D.C. Metropolitan

1 South
2 Southeast

3 Once afforded further discovery into this issue, Songkick will allege and refine further
4 relevant geographic markets to conform to the proof (including narrowing or
5 broadening them according to the evidence).

6 **Market Power**

7 **A. Ticketmaster**

8 68. As discussed above, Ticketmaster is the largest primary ticketing services
9 provider in the nation. Ticketmaster has historically possessed multiple competitive
10 advantages. As a result, smaller primary ticketing service providers (of all types) have
11 been limited in their ability to compete.

12 69. The primary source of, and barrier surrounding, Ticketmaster's market
13 dominance is a nationwide web of long-term, exclusive dealing contracts with the vast
14 majority of major concert venues throughout the United States. General sales under
15 these contracts typically involve the sale of available tickets to the venue's shows,
16 excluding artist presale allocations. In exchange, Ticketmaster pays the venue a high
17 fixed fee (often including undisclosed rebates and other subsidies), which, depending
18 on the venue and the term of the contract, can be many millions of dollars. Given the
19 amounts at issue, this is a substantial barrier to entry and has allowed Ticketmaster to
20 steadily grow its venue contracts since its merger with Live Nation.

21 70. The long-term exclusive dealing contracts with venues also create market
22 power and barriers to entry because of their length and ubiquity. Ticketmaster's
23 exclusive dealing arrangements with venues have terms that may range to ten or more
24 years in length and presumably much longer for Live Nation-controlled venues.
25 According to published industry data, Ticketmaster controls the distribution for
26 approximately 80% of major concert venues, and works with over 12,000 venues total.
27 Published industry data also indicates that approximately 70% of all online concert
28 ticket sales are completed through ticketmaster.com or Ticketmaster-run websites.

1 71. Ticketmaster has also entered into long-term exclusive dealing
2 arrangements with concert promoters, which is another barrier to entry and source of
3 market power. Live Nation, the largest of these promoters, utilizes its subsidiary and
4 agent, Ticketmaster, almost exclusively and actively seeks to dissuade its artists from
5 using any other presale ticketing platform.

6 72. In addition to Ticketmaster's exclusive contracts, new entry into the
7 provision and sale of ticketing services, whether artist presale, concert venue, or other
8 types, is costly and time-consuming, thus constituting a substantial, additional barrier to
9 entry. A ticketing service provider must develop, maintain, and efficiently operate the
10 required ticketing software and hardware computer systems, and possess the ability to
11 demonstrate the reliability of its computer systems. Moreover, for *concert venue*
12 ticketing service providers in the current marketplace, the company must possess the
13 ability to provide substantial up-front payments to customers. Given these baseline
14 requirements, no new entrant has developed or can develop the combination of
15 comparable business characteristics and abilities in order to compete in concert venue
16 ticketing services with the combination of Ticketmaster and Live Nation.

17 73. Within the last four years, additional entry barriers protecting
18 Ticketmaster's dominance have emerged. The merged firm's promotion and artist
19 management businesses, for example, provide a steady stream of business to
20 Ticketmaster and its venue clients that smaller ticketing companies cannot overcome.
21 Pre-merger, Live Nation began to challenge Ticketmaster's dominance by using its
22 stable of artists as an inducement to venue operators to select its own concert venue
23 ticketing services over Ticketmaster's. Without that constraint in the market—and with
24 Live Nation's now perfect alignment with the company against which it previously
25 sought to compete—Ticketmaster has only grown its market share and ability to set
26 prices without fear of serious competition from any new entrant. In the last four years,
27 Ticketmaster has increased its market dominance and claims it is renewing over 100%
28 of its long-term exclusive dealing contracts as they expire, which necessarily occurs at

1 the expense of rivals. Ticketmaster has also, within the past four years, sought to
2 extend this monopoly power to artist presale ticketing services.

3 74. In addition to barriers to entry based on the current market structure and
4 conditions (including Defendants' corporate structure), Ticketmaster's and Live
5 Nation's anticompetitive practices, discussed herein, including but not limited to tying
6 agreements, long-term exclusive dealing contracts, group boycotts with various third
7 parties against Ticketmaster's competitors, and coercion of and threats against disloyal
8 customers and others, also act as a barrier to entry.

9 75. Ticketmaster's market power is evidenced by the high and
10 supracompetitive fees that it charges for ticketing services, and the restricted output
11 those fees cause. Ticketmaster's fees can collectively increase the price of a ticket to
12 the consumer by 20-80% over the ticket's face value, which, in turn, generates gross
13 profits (after all rebates and other payments) to Ticketmaster of over 50%. There are no
14 effective constraints on Ticketmaster's ability to charge these supracompetitive fees
15 because box office sales for most concerts and other events are minimal and are
16 continuing to decrease. This is because (a) in certain cases, Ticketmaster dictates that
17 box office sales cannot begin until a specified time period following commencement of
18 the online general sale (*e.g.*, for Madison Square Garden, box office sales are prohibited
19 until one day after the general sale commences on ticketmaster.com), (b) consumers
20 realize they have a better chance of obtaining a better seat online, and (c) consumers
21 continue to increasingly prefer online purchases through mobile- or web-based
22 applications. As noted above, these factors also lead to restricted output in overall
23 ticket sales, as is demonstrated by the fact that 40-50% of tickets to concerts at
24 Ticketmaster-contracted venues go unsold every year.

25 **B. Live Nation**

26 76. As discussed above, Live Nation is the largest concert promoter in the
27 nation and the world. Live Nation has distinct competitive advantages as compared to
28 AEG Live, the only other major national concert promoter currently in the market.

1 Neither AEG Live nor any likely entrant to the concert promotion services market
2 possesses the combination of attributes to prevent Live Nation's selective exercise of
3 market power over artists and major concert venues by the merged firm. New entry
4 into the provision and sale of concert promotion services at the scale of Live Nation is
5 costly and time-consuming. Promoters must have the ability to provide substantial up-
6 front payments to artists, and artists seeking to conduct a concert tour, particularly a
7 national tour in the United States, require employees with the expertise, contacts, and
8 business acumen to organize and promote such a tour. Furthermore, given that a
9 United States concert tour is specifically tied to the United States venues and regions in
10 which it is conducted, and requires specialized knowledge and skills regarding those
11 markets (among other related factors), artists require that concert promotion services be
12 provided in the United States by service personnel located in and throughout the United
13 States. It would take a prospective new entrant a substantial investment of money and
14 over multiple years to develop the combination of comparable characteristics necessary
15 to compete with the merged firm in concert promotion services and, even then, there is
16 no assurance that it could in any way reduce Live Nation's market power.

17 77. For nearly two decades, Live Nation has dominated concert promotion
18 services overall. It has maintained its dominance by virtue of its size and scope, and
19 (post-merger) anticompetitive and unfair business tactics, including acquisitions of
20 competing promoters, and incurring losses via significant overpayment to artists from
21 tour revenues with the aim of reducing rival promoters' access to clients.

22 78. Following the merger with Ticketmaster, additional entry barriers are
23 emerging. Ticketmaster provides the bulk of the merged firm's annual operating
24 income. With that income stream from Ticketmaster, Live Nation is able to offer
25 higher payments to artists than AEG Live and other concert promoters, and to use its
26 promotion business as a loss leader to generate outsized profits for its ticketing and
27 sponsorship businesses. The ability to price in this way and nevertheless ensure
28 massive profits for the overall company is one of the reasons why Live Nation has

1 durable market power over its smaller competitors. Armed with that unique pricing
2 ability, Live Nation has only grown its market share and power without fear of serious
3 competition. Live Nation has also recently acquired four of the five largest annual
4 festivals in the United States. Playing in those festivals—which provide massive
5 exposure and large paychecks—is hugely important to today’s touring artists’ careers.
6 Live Nation’s ownership of these festivals therefore gives it an additional point of
7 leverage to pressure artists to comply with its demands.

8 79. Live Nation’s market power is also supported by current trends in the
9 music industry. Whereas, in previous decades, revenues from recorded music were
10 musicians’ main source of income, with touring revenues providing a smaller income
11 stream, those statistics have since reversed themselves. This reversal is largely due to
12 the advent of modern music streaming and download technologies, and it requires
13 artists to place much more emphasis on the touring portion of their careers. This reality
14 has greatly increased Live Nation’s power and control over the shape of artists’ careers,
15 making them more reluctant than ever to defy Live Nation. Mr. Rapino has admitted
16 that artists today make “about 95%” of their income from live music events and that
17 Live Nation is now the “largest single financier” of artists worldwide (more than record
18 companies). Mr. Rapino uses this position to intimidate artists, claiming, for example,
19 that using an artist presale ticketing service other than Ticketmaster is like hurting Live
20 Nation itself.

21 80. Live Nation holds over 60% of the concert promotion services market and
22 promotes at least 80% of the top-billing global touring acts, which tour the United
23 States. Within the last four years, Live Nation has used its market dominance to aid its
24 subsidiary Ticketmaster in its efforts to destroy rivals such as Songkick.

25 **Defendants’ Intent To Destroy Competition in the**
26 **Artist Presale Ticketing Services Market**

27 81. The merged Ticketmaster and Live Nation want to avoid third party-run
28 artist presales entirely because they take tickets and web traffic off the Ticketmaster

1 platform and give artists access to information (*e.g.*, fans’ consumer data) that the
2 merged company has long preferred to keep to itself in order to maximize their revenue
3 streams and bolster Live Nation’s various divisions. Refusing artists access to their
4 fans’ consumer data also keeps them dependent on Defendants for marketing and
5 distribution (even though it is the artists, not Defendants, that generate the demand for
6 ticket sales that generate this data). For example, Mr. Rapino expressed this intent
7 when he told several artists (whose identities will be disclosed once a protective order is
8 in place) that they could not take a single ticket off of the Ticketmaster system, period.
9 Mr. Rapino similarly told at least one artist that hurting Ticketmaster (by using anyone
10 other than Ticketmaster for artist presale ticketing services) was like hurting Live
11 Nation itself—a powerful threat in light of Live Nation’s position as the “single largest
12 financier” of the artist community in the world.

13 82. Defendants also intend to remove competition within the artist presale
14 ticketing service market because effective artist presales—like those Songkick
15 conducts—inhibit scalping, which is directly contrary to Defendants’ recent push to
16 grow and funnel tickets to Ticketmaster’s secondary ticketing platforms, including
17 TicketExchange, TicketsNow, TM+, and Verified Tickets, a significant and growing
18 revenue stream for Defendants.

19 83. Moreover, the merged company’s sponsorship and advertising business
20 unit is the highest-margin division within Live Nation. When artists conduct presales
21 on non-Ticketmaster platforms, thereby directing their fans to their own websites, and
22 sell tickets directly to those fans, the artists retain the consumer data their concerts
23 generate, and draw users away from ticketmaster.com, thereby directly drawing dollars
24 away from two of Defendants’ strongest revenue generators (ticketing and advertising)
25 and undermining a significant portion of the supposed value derived from
26 Ticketmaster’s business model.

27 84. Ticketmaster has a massive database of email addresses—approximately
28 130 million email addresses—that it has collected over the years from its online ticket

1 sales and which it generally refuses to provide to the artists who create the demand for
2 those tickets. Today, market access to Defendants' database forces many artists to use
3 Ticketmaster's services. Removing artist presale ticketing service providers (which
4 provide this type of direct contact information to their artist-clients) from the market
5 will therefore enhance and/or maintain Defendants' monopoly power.

6 85. Ticketmaster also has an ecommerce website, ticketmaster.com, through
7 which every one of its online ticket purchasers must pass. As such, ticketmaster.com is
8 an extremely valuable advertising opportunity for any company looking to reach
9 millions of consumers on a daily and annual basis. Less traffic to ticketmaster.com
10 means less advertising revenue to Defendants.

11 86. For these reasons, Ticketmaster (under Live Nation's direction and
12 control, and with its direct assistance) intends to remove Songkick and similar
13 companies as its competitors because it prefers to keep control over every aspect of the
14 ticketing process for a show. It is far more valuable to Defendants to do so than to
15 allow artists to create their own online ticketing locations, which enables artists to (a)
16 direct web traffic to their own online properties (which decreases Ticketmaster's ad
17 revenues), (b) collect fans' email addresses and other contact information themselves
18 (which reduces future reliance on Ticketmaster's database), and/or (c) otherwise run an
19 artist presale without Ticketmaster's help (which reduces Ticketmaster's fees for that
20 artist's shows and greatly inhibits their ability to generate secondary ticketing revenues
21 from those tickets).

22 87. But the artists' fans are antagonistic to Ticketmaster because of its
23 monopolistic service fees, and Ticketmaster (as demonstrated by the vast number of
24 empty seats for most concerts) is simply not very good at adequately marketing shows,
25 nor is it very good at driving demand. Defendants themselves estimate that an average
26 of 40% of tickets to live music shows within the United States go unsold, with industry
27 insiders believing this figure to be closer to 50%. They also estimate that 80% of Live
28 Nation's shows do not sell out.

1 88. It was into this gaping hole that Songkick first stepped several years ago,
2 all with the goal of increasing ticket sales overall and thereby benefiting every part of
3 the live music industry, particularly the artists whose artist presale allocations Songkick
4 helps market and sell. As John Pleasants, Ticketmaster's CEO from 1999-2005, once
5 admitted, "If you sell two percent more tickets in a year for a building, literally, it just
6 dwarfs any amount of economics that might have been negotiated in what the revenue
7 splits are on conveniences charges and things like that." Songkick sought to improve
8 the economics of the industry and most benefit the individuals and entities that actually
9 drive demand for ticket sales: the artists and their fans.

10 **Songkick Threatens Ticketmaster's Monopoly Power**
11 **in the Artist Presale Ticketing Services Market**

12 **A. Songkick's Early Interactions With Defendants: The Introduction of the**
13 **"Fan Club Policy"**

14 89. Songkick delivers value to artists by creatively using technology to: (a)
15 grow and help artists better understand their fan base; (b) market concerts to increase
16 ticket sales, primarily by leveraging artists' own websites (using Songkick's white label
17 ecommerce solution) and other distribution channels (*e.g.*, social media); (c) reduce
18 scalping, including through the use of proprietary, patent pending technology; (d) help
19 artists develop their brands and connect with fans; (e) generate consumer data through
20 direct-to-fan artist ticket presales so that the artist develops the ability to directly
21 connect with, and market to, its fans over the long term; and (f) leverage fan data to
22 help artists pinpoint demand and route world tours. The thesis underlying Songkick's
23 business is that artists are their own best marketers. Songkick empowers artists with
24 data, design, branding, marketing and ticketing services to maximize their touring
25 revenues and increase their independence from third parties such as Live Nation and
26 Ticketmaster. Songkick has grown so popular that it most recently worked with over
27 150 premier artists on more than 3,000 shows in a single year, and its clients have
28 included a wide variety of today's most recognizable music artists.

1 90. Early on, CrowdSurge received little attention from Ticketmaster.
2 However, once CrowdSurge began attracting significant clients and growing its artist
3 presale ticketing services market share, Ticketmaster finally contacted CrowdSurge
4 regarding artist presales. At that time, Ticketmaster claimed that CrowdSurge's artist-
5 clients, who had no contract with Ticketmaster for artist presale ticketing services or
6 concert venue ticketing services, must comply with a so-called "fan club policy" or else
7 not receive their artist presale allocations. Under this "policy," artists could only sell
8 their artist presale allocation tickets as part of presales to "legitimate" fan clubs (the
9 definition of which was supposedly up to Ticketmaster and subject to redefinition at
10 Ticketmaster's whim). The first time Ticketmaster ever sent a copy of any version of
11 its fan club policy to CrowdSurge was in early 2012.

12 91. CrowdSurge and its clients believed the fan club policy was inapplicable
13 to their artist presales, but CrowdSurge wished to avoid confrontation with
14 Ticketmaster and instead rely on the merits of the company's offerings to attract
15 clients. Relying on Ticketmaster's statements in its fan club policy (as well as its
16 verbal assurances) that compliance with the policy meant Ticketmaster would not
17 interfere with an artist's presale, CrowdSurge invested months of time and significant
18 resources to develop fan club login technology and other business practices to comply
19 with the fan club policy. This was no small investment for a company that had
20 approximately 25 employees at the time. CrowdSurge, in a further but failed effort to
21 coexist with Ticketmaster, similarly made compliance with the fan club policy a
22 keystone of its artist presale business, even though, as noted above, it and its clients
23 believed the policy was inappropriate but something that needed to be tolerated due to
24 Defendants' market power.

25 92. Ticketmaster claimed that its "fan club policy" required that the fan club
26 handling an artist presale should: be the artist's *only* "official" fan club maintained for
27 promotional purposes, even if they have numerous promotional arms; provide for some
28 sort of "meaningful interaction" between the artists and fan club members; not advertise

1 presales on “third party marketing vehicles (e.g., Facebook)”; require personal data
2 from fans in order to become members and not offer or market tickets, packages, and
3 prices for specific events to non-members; limit artist presale tickets to four per
4 performance; and issue a unique password and ID to each member.

5 93. Ticketmaster’s attempt to limit its competitors to a narrowly-defined “fan
6 club” fails to acknowledge that, for many of today’s artists, traditional fan clubs have
7 been largely displaced by social media, such as Twitter, Facebook, Instagram, and
8 Songkick. (For example, according to Nathan Hubbard, Head of Commerce at Twitter
9 and former CEO of Ticketmaster, “Roughly half of the 100 most followed accounts on
10 Twitter are artists, and the technology is now in place for artists to commercialize their
11 follower relationships by selling songs, tickets and t-shirts directly on these platforms.”)
12 Twitter, Facebook, Instagram, Songkick, artist websites, and other modern
13 technological options provide the same benefits and serve the same types of purposes
14 today as traditional fan clubs, and due to advances in technology, provide artists with a
15 quickly and easily accessible method of communication for engaging directly with fans.
16 Nevertheless, Ticketmaster’s fan club policy stated that an artist must maintain an
17 anachronistic and outdated approach for promotional purposes, or else not be able to
18 obtain their artist presale allocation. There was no legitimate reason or procompetitive
19 justification for this attempted imposition, as demonstrated by (among other things) the
20 fact that none of Ticketmaster’s competitors, including AXS and Ticketfly, have
21 imposed any similar requirements on artist presales, and that Defendants themselves
22 have recognized in their public filings that social media and digital platforms much
23 “more effectively reach [one’s] fans and drive more ticket sales” than traditional media
24 and marketing methods.

25 94. Following its initial receipt of the fan club policy, CrowdSurge performed
26 several artist presales on behalf of its clients through what it understood were the
27 “compliant” fan clubs demanded by Ticketmaster, its competitor in artist presales. It
28 did so regardless of whether such fan clubs were a valid requirement for the artist to

1 obtain its artist presale allocations from Ticketmaster or Live Nation venues. This
2 compliance with the monopolist's demands led CrowdSurge to reasonably rely on
3 Ticketmaster's promises and believe that it was now free to continue developing its
4 business without harassment from Defendants. But the quiet was short-lived.

5 95. Beginning in mid-2012, Ticketmaster began a scheme of prolonged
6 interference and harassment by contacting CrowdSurge (and, later, Songkick) and/or its
7 clients and informing them that Songkick's artist presales were not "compliant" with
8 the fan club policy. This was not limited to an artist presale here or there; and over
9 time it came to occur for virtually every artist presale Songkick helped conduct. On
10 occasion, Ticketmaster claimed it was at least willing to discuss the issue and granted
11 so-called "one-time exceptions" for various presales. Such supposed "exceptions" were
12 granted in situations where the supposedly "non-compliant" fan club was clearly
13 anything but, and/or where Ticketmaster was unwilling to risk shutting down the
14 presale because they were trying to pitch the artist's business in other areas.

15 96. Ticketmaster and Live Nation executives and employees also told a
16 number of artists and/or their managers that they simply could not work with Songkick
17 and that they could not use Songkick's services under any circumstances, even at
18 venues that did not have ticketing contracts with Ticketmaster.

19 **B. 2014-2015: Defendants Seek To Fully Exclude Competition in the Artist**
20 **Presale Ticketing Service Market**

21 97. Despite Ticketmaster's efforts, Songkick continued to compete on the
22 merits and continued to succeed. The recipe for its success was simple: Defendants are
23 just not as good at providing artist presale ticketing services as Songkick. Among other
24 issues, Defendants: charge much higher service fees for artist presales than Songkick;
25 do not provide bespoke, artist-centric marketing campaigns on the artist's own website
26 and online properties; drive negligible demand for artist upsell opportunities; feed
27 traffic to their secondary ticketing platforms; and do not freely share the consumer data
28 that an artist presale yields. Thus, in spite of the pushback and threats from

1 Defendants' employees and executives; in spite of the fear, uncertainty, and doubt
2 Defendants spread regarding Songkick; and in spite of the "one time exceptions" and
3 various considerations Defendants offered to artists (discussed below) if and only if
4 they would agree to either forego an artist presale altogether or choose Defendants'
5 artist presale ticketing services instead, artists continued (and continue) to prefer
6 Songkick because of its demonstrated track record, creativity, and level of service.

7 98. Faced with this reality and the increasing demand for bona fide artist
8 presale ticketing services, Defendants decided they would try to destroy competition in
9 artist presale ticketing services in favor of their own artist presale ticketing service
10 business. To this end, Defendants engaged in a wide variety of anticompetitive activity
11 and predatory acts in recent years that have left Songkick no choice but to sue to
12 prevent further harm to competition than what Defendants have already caused.

13 99. For example, for *any* artist presale Songkick handled at a Ticketmaster or
14 Live Nation venue, Ticketmaster claimed the artist and Songkick needed to comply
15 with an artificial fan club policy with constantly shifting rules. Ticketmaster had no
16 right to make this demand, based on the artists' rights to the artist presale allocations
17 and the venues' rights to issue such allocations unfettered by Ticketmaster's
18 interference.

19 100. In furtherance of this unlawful scheme, Ticketmaster falsely claimed that
20 Songkick's clients' fan clubs were not "compliant" even when they were. No pretense
21 was too absurd. Ticketmaster was under instructions from Live Nation and its own
22 management to refuse to permit Songkick to handle any artist presales at Ticketmaster
23 and/or Live Nation venues. This pattern of "refuse first and find reasons why later"
24 became so prevalent that several Songkick clients noted that Defendants seemed to be
25 "at war" with Songkick.

26 101. One such prospective client was another of the most recognizable artists in
27 today's market. A representative for the artist told Songkick that it would be
28 completely unable to market the artist's presales for an upcoming tour because of the

1 “war” Defendants were engaged in against Songkick. The representative noted that the
2 issue stemmed from Live Nation itself and that the artist understood Live Nation would
3 try to block any presale Songkick tried to run. The representative similarly explained
4 that he had previously seen instances where Songkick put together an artist presale
5 marketing package for Defendants’ approval and sign off, which ended up being a
6 waste of time because there was never any chance that Defendants would approve the
7 package simply because it came from Songkick. In his own words, “If you changed
8 your business model to selling hot dogs in the parking lot, Live Nation won’t even let
9 that happen. They want nothing to move forward with Songkick.” And, because of
10 Ticketmaster’s threats, nothing did move forward with that artist.

11 102. In this vein, Defendants also continued to present an ever-shifting view of
12 what the fan club policy supposedly required, engaging in a figurative game of “whack-
13 a-mole” from late 2014 through the filing of this complaint. Ticketmaster did so by
14 identifying to artists, their agents, and to Songkick supposed unwritten requirements in
15 the fan club policy. (These included supposed rules that, *inter alia*, any “Buy Tickets”
16 or similar buttons must be hidden behind the artist’s fan club website login; that artist
17 presale dates and times could only be revealed to existing fan club members; and that a
18 fan club could not be created “shortly before” a tour, even if the artist was a new or
19 emerging act or an act reuniting for a tour, and/or the artist viewed that club as its
20 official club.) One by one, as Songkick’s artist-clients and their booking agents
21 complied with and/or pushed back against Ticketmaster’s supposed unwritten rules,
22 Ticketmaster made up new rules and claimed that the next Songkick client’s fan club
23 was non-compliant for the newly-identified reason(s). This pattern repeated itself again
24 and again, and it caused Songkick’s artist-clients substantial frustration, which
25 eventually caused several to reluctantly refrain from doing business with Songkick
26 altogether (even though the client conceded that Ticketmaster’s positions on fan club
27 compliance were absurd and unsupported).

28

1 103. In demanding supposed strict adherence to their ever-changing arbitrary
2 and unreasonable policy, Defendants pretended to ignore that, today, in the world of
3 competing social media, “traditional” fan clubs are just one promotional tool artists use
4 to connect with and identify their fans. Although Defendants claim that they have no
5 objection to artists selling artist presale allocations to fan clubs “or similar
6 arrangements,” their activities demonstrate that, in their efforts to squash competition,
7 they will only agree to artist presale allocations under an extremely narrow, divorced-
8 from-reality view of what is a “legitimate” fan club (and often not even then).

9 104. It did not matter if Defendant employees contradicted their earlier
10 statements or authorizations for similar artist presales, or if they relied on anachronistic
11 definitions of a fan club and its uses. Songkick pointed out these inconsistencies to
12 Ticketmaster and highlighted examples of fan club presales they had authorized for
13 other, non-Songkick clients. These statements, however, did not change Defendants’
14 stance. If Songkick handled the presale, then the artist’s presale was not compliant with
15 the fan club policy, period.

16 105. In mid-July 2015, Ticketmaster issued a supposed “clarification” to its fan
17 club policy to further restrict artist presales of artist’s tickets to their own concerts,
18 although (despite Songkick’s repeated requests) it did not send a copy to Songkick until
19 August 12, 2015. For this “clarification” of the policy, Ticketmaster added numerous
20 predatory conditions in an attempt to remove competitors that threatened its monopoly
21 on artist presale ticketing services. For example, Ticketmaster now informed artists
22 that the allegedly necessary fan club must itself be “easily found” via search engines
23 and on the artist’s own webpage (as opposed to a social media site, Twitter account,
24 etc.). Ticketmaster also stated that the fan club must have an online “devoted ongoing
25 community with its own identity and virtual home where members interact with one
26 another in a members-only section” (for which Ticketmaster has cited examples such as
27 “online chats, online message boards and artist journals”), regardless of whether the
28 artist’s fan base is most engaged through the artist’s social media platforms or its fan

1 club otherwise does not fit these seemingly deliberately antiquated notions and
2 technologies. Ticketmaster also stated that dates and times of fan club presales could
3 only be accessible by registered fan club members, and that an artist could not even
4 inform potential fan club members of a presale for an upcoming event until they were
5 already a fan club member, severely limiting the reach of the very fan club they impose.

6 106. These predatory restrictions, which were aimed at removing Songkick and
7 other smaller competitors from the artist presale ticketing services market and forcing
8 artists to deal instead with Ticketmaster, unreasonably restrain an artist's and
9 Songkick's promotional options in today's world. For example, in order to be
10 compliant with the letter of Ticketmaster's July 2015 fan club policy, a "legitimate" fan
11 club *must* have a message board (or equivalent feature) on a website. Message boards
12 were previously popular forms of internet communication, but have largely died out in
13 light of technologies and mobile applications that foster better communities and direct
14 artist-to-fan interaction. As one artist manager told Ticketmaster in an effort to secure
15 the artist's presale allocation, "If you really want us to have a message board, fine, we
16 will. Our fans won't care but we'll build it if that's what you need." Moreover, artists
17 often promote their shows and drive demand through instantaneous social media, which
18 provides far more active engagement with fans than traditional fan clubs given its
19 accessibility and ease of use. Fans often follow these updates even if they are not in
20 any "official" fan club and will use them as a signal for when and where to purchase
21 tickets to an upcoming show and for the latest news, updates, and content from the
22 relevant artist. Even though not the same as joining a traditional "fan club," registering
23 for email updates from the artist, as well as following the artist on social media (*e.g.*,
24 "likes" on Facebook or Instagram, "follows" on Twitter, and "tracks" on Songkick), all
25 offer far broader and better reach than fan clubs of the past were ever able to
26 accomplish, and generally provide just as good an indication (if not better) of whether a
27 particular person is an engaged fan. Nevertheless, Ticketmaster's fan club policy
28

1 refuses to acknowledge this reality and seeks to impose its terms only on
2 Ticketmaster's artist presale ticketing services competitors, but not Ticketmaster itself.

3 107. Such restrictions are more clearly aimed at preventing competition in the
4 artist presale ticketing services market than at achieving the supposed purposes of a fan
5 club requirement. Notably, Ticketmaster does not require artists using its own artist
6 presale ticketing services to comply with the fan club policy. In fact, Ticketmaster
7 specifically markets this "no compliance" policy when pitching its own artist presale
8 ticketing services.

9 108. The unfair and unreasonable nature of Ticketmaster's campaign in this
10 time period is also evidenced by the fact that it informed Songkick that a particular fan
11 club for an up-and-coming artist was non-compliant, even though the artist in question
12 had not hired (or even had discussions with) Songkick for their United States tour
13 presales. If there was any suspicion at all that Songkick was working with an artist,
14 Ticketmaster immediately sought ways to shut that process down, regardless of whether
15 Songkick had actually secured any work from the artist.

16 109. Ticketmaster also informed Songkick that it needed to comply with
17 artificial, arbitrary, and unreasonable fan club requirements at several venues Songkick
18 was not previously aware exclusively used Ticketmaster's concert venue ticketing
19 services. In response to Songkick's request that it send Songkick a list of all venues
20 within the United States with which it had exclusive ticketing contracts, Ticketmaster
21 refused to do so and stated that Songkick would need to ask the box office at each
22 venue about their concert venue ticketing services contracts. This tactic was aimed at
23 creating unreasonable transaction costs for Songkick's business, given that Songkick
24 would need to repeatedly inquire of every single concert venue on every single artist's
25 tour whether they had a then-current exclusive ticketing contract with Ticketmaster.
26 Indeed, the main box office contacts at each concert venue often are unaware of the
27 existence or specifics of Ticketmaster's contract with the venue because they are not
28

1 senior enough at the venue or because the “exclusive” nature of Ticketmaster’s contract
2 with the venue may have recently changed or be unclear.

3 110. Alternately, in discussions with Songkick, Ticketmaster insisted that
4 Songkick’s “presumption” must be that Ticketmaster has an exclusive dealing contract
5 with any venue at which it sells general sale tickets for the artist’s show. In its dealings
6 with Ticketmaster and through publicly available information, Songkick realized that
7 this “presumption” was demonstrably not the case. Songkick therefore repeatedly
8 requested (over multiple years) that Ticketmaster identify the venues at which
9 Ticketmaster believed Songkick’s artist-clients must comply with the then-current
10 Ticketmaster fan club policy (and its then-current interpretation by Ticketmaster).
11 Ticketmaster just as repeatedly refused this request, all in an attempt to unreasonably
12 raise the transactions costs of using Songkick’s services to unacceptable levels, create
13 confusion in the market, and create friction between Songkick and its clients and
14 partners.

15 111. Defendants also tried to force Songkick and/or its artist-clients to agree to
16 fix service fees for artist presale tickets at the same price Ticketmaster charged or at a
17 fee amount dictated by Ticketmaster. On multiple occasions, Ticketmaster stated that it
18 would allocate Songkick’s artist-clients their artist presale allocations only if Songkick
19 agreed to charge at least Ticketmaster’s dictated service fee and pay such fee to
20 Ticketmaster, thus increasing the all-in price of the artist presale tickets to the same or
21 more than general sale tickets. By demanding that Songkick erase this difference in
22 price between the artist presale and general sale, Defendants tried to increase prices to
23 consumers, to artificially decrease demand for artist presale tickets, and to impose
24 restrictions on Songkick’s services that artificially diminished its ability to compete
25 with Ticketmaster’s artist presale ticketing services. Notably, prior to its merger with
26 Ticketmaster, Live Nation well understood that lower service fees would increase
27 overall ticket demand, which is why it decided to vertically integrate and take on
28

1 Ticketmaster's ticketing monopoly. Since the merger, however, with its interests now
2 aligned with Ticketmaster's, Live Nation has behaved very differently.

3 112. The ploy (one among many) went as follows. First, Ticketmaster asserted
4 that the artist had no "*bona fide*" fan club (as it did with virtually every Songkick client,
5 no matter what). Then, after argument with the artist manager on the issue,
6 Ticketmaster granted a "one-time exception" to the fan club policy so that Songkick
7 could conduct the artist's presale. However, the "one-time exception" was conditioned
8 upon the artist paying Ticketmaster its standard service fee or a fee determined by
9 Ticketmaster (anywhere from 2-5 times the fee that would have been charged in the
10 Ticketmaster-less artist presale hosted by Songkick), even though Ticketmaster was not
11 providing the ticketing service. This then forced the artist to choose one of five
12 unpalatable options: (1) cancel the presales for the Ticketmaster-exclusive venues; (2)
13 concede the presales to Ticketmaster; (3) absorb the higher fees Ticketmaster
14 demanded; (4) raise the service fees on the non-Ticketmaster venue presales to cover
15 the fees Ticketmaster demanded; and/or (5) raise the service fees only on Ticketmaster
16 venue presales to cover both the fees demanded by Ticketmaster and Songkick's cost of
17 doing business (thus making tickets more expensive in the presale than in the general
18 sale).

19 113. Defendants also colluded with and/or coerced concert venue operators into
20 refusing to allocate artist presale tickets if Songkick was at all involved in an artist's
21 planned presale. This was despite Ticketmaster's repeated public admission of the
22 artists' rights to those tickets (described above). Similarly, Defendants colluded with
23 and/or coerced managers into not using Songkick's services. Where managers
24 nevertheless wanted to use Songkick's services for their artist-clients, Defendants
25 pressured them to back out of any relationship with Songkick via threats of retaliation
26 at the promotion and ticketing levels (*e.g.*, Ticketmaster would withhold marketing
27 support for the show, including homepage marketing on ticketmaster.com and email
28 blasts to the past and prospective ticket purchasers in Ticketmaster's 130 million+

1 customer database, thereby jeopardizing the success of Ticketmaster's own general sale
2 for the show), as well as through various other financial repercussions.

3 114. In furtherance of their unlawful scheme, Defendants also spread
4 demonstrable falsehoods to artists, managers, and concert venue operators about
5 Songkick, including claims that its systems were unable to handle artist presale
6 ticketing services, that it could never obtain an adequate allocation of tickets (which
7 was Defendants' edict), and other statements intended to spread fear, uncertainty, and
8 doubt regarding Songkick's service and product offerings. These statements were
9 untrue, and the only one that approached reality—the limited amount of tickets
10 Songkick was allowed to presell for artists—was a discriminatory limitation imposed
11 by Defendants aimed at preventing artists from securing and selling their artist presale
12 allocations through Songkick and other competitors.

13 115. Defendants also regularly informed artists that they could not leverage
14 Ticketmaster's broader concert venue ticketing and general marketing services and
15 would not be allowed to sell music, merchandise or VIP experiences with tickets in the
16 general sale if they used Songkick for artist presales. For example, Defendants
17 threatened multiple artists with an outright refusal to use its marketing resources to
18 support their general sale tickets and overall tour if the artist conducted a Songkick
19 artist presale. A blatant example involved one of the most iconic and important artists
20 touring today, whose identity will be disclosed once a protective order is in place. In
21 early 2014, the artist launched an artist presale for a concert in which Songkick was the
22 artist presale ticketing service provider. Later that day, the artist's promoter discovered
23 that the show was not being marketed on Ticketmaster's website homepage, and
24 submitted an inquiry to Ticketmaster, the venue ticketing service provider, as to why
25 the marketing had been removed. Ticketmaster responded, "[A]rtists/tours who keep
26 100% of their tickets on the TM platform are able to unlock the home page placement
27 marketing asset...we will not be able to offer homepage placement for [the artist's] tour
28 at this time." This artist had one of the biggest music tours of 2014, grossing over \$100

1 million worldwide (and for which Ticketmaster was the concert venue ticketing service
2 provider for the majority of U.S. shows), yet Ticketmaster refused to market the artist's
3 show on the ticketmaster.com website because the artist used Songkick for artist presale
4 ticketing services.

5 116. In another instance, Defendants threatened yet another artist (whose
6 identity will be disclosed once a protective order is in place) that Defendants would not
7 market the artist's tour and would moreover not permit the artist to use Paperless
8 Ticketing (a technology designed to inhibit scalping) on any general sale tickets for the
9 artist's tour if the artist opted to engage Songkick rather than Ticketmaster for artist
10 presale ticketing services. If carried out, such threats to withhold marketing would
11 clearly damage Defendants, because they would result in overall lower ticket sales for
12 Ticketmaster's concert venue ticketing business, and would result in lower revenues for
13 Live Nation's promotion business and Ticketmaster's venue clients. In a competitive
14 market, such threats would be economically irrational. Ticketmaster's aggression
15 therefore demonstrates the lengths to which Defendants were prepared to go in order to
16 protect Ticketmaster's market power, including damaging themselves and their clients
17 in order to preserve that power. In this specific instance, the threat worked. As the
18 artist's management explained to Songkick: "[T]he Ticketmaster bullying is out of
19 control and we're not going to be able to do all tour pre-sales off-platform. They are
20 just sticking it to us too hard."

21 117. In furtherance of their unlawful scheme within the United States market,
22 Defendants also sought to influence artists' behavior outside of the country with threats
23 of punishment within the United States if they chose Songkick's services abroad; *i.e.*, if
24 they chose Songkick to provide artist presale ticketing services in geographic markets
25 other than the United States. For example, one artist wanted to use Songkick's artist
26 presale services for the U.K. and European portion of their tour, where Defendants do
27 not have the same dominance over the live music industry that they enjoy in the United
28 States. Live Nation, on behalf of itself and Ticketmaster, informed that artist—one of

1 the largest touring acts in the world—that using Songkick, even in the U.K. and
2 Europe, was a “complete nonstarter.” If the artist did use Songkick overseas, then
3 Defendants would refuse to provide them several ticketing and marketing services in
4 the United States, including the ability to giveaway a free copy of the artist’s album
5 with every ticket sold in the general sale (as was this particular artist’s intent).

6 118. In yet another example, Ticketmaster informed an artist that they would
7 “permit” the artist to use Songkick’s artist presale ticketing services for certain shows
8 on their current tour, but only if the artist committed to using Ticketmaster’s equivalent
9 services on all future tours.

10 119. Defendants’ tying the use of their concert venue ticketing services and/or
11 concert promotion services on the use of Ticketmaster artist presale ticketing services
12 were not limited to just the few examples listed above. Instead, based on these
13 instances and Songkick’s business experiences since, this was a widespread and
14 consistent practice.

15 120. As alleged above, another predatory, unfair, and discriminatory practice
16 Ticketmaster uses to preserve its monopoly power is to tell artists they cannot obtain
17 more than 8% of a venue’s inventory for a show if the artist uses Songkick. However,
18 if the artist chooses Ticketmaster’s artist presale services instead, they can then obtain
19 allocations for as much of the ticket inventory as they want. Considering that 80% or
20 more of the shows that Defendants promote do not sell out, and that Defendants do not
21 sell between 40-50% of their tickets on average, this restraint on trade—which is
22 effectuated through contracts with concert venue operators—is unreasonable and
23 expressly designed to negate competition to the detriment of every market player except
24 Defendants. Moreover, the restraint only permits artists to obtain what they desire (a
25 higher artist presale allocation) if they agree to use a service they do not desire
26 (Ticketmaster’s artist presale ticketing services). There are no procompetitive benefits
27 to creating a situation in which fewer tickets are sold overall; Defendants have acted to
28 suppress demand solely to hobble Songkick and other competitors.

1 121. Live Nation also used its dominance in the concert promotion services
2 market and its control of desirable venues to coerce even Songkick's most ardent artist-
3 clients to choose Ticketmaster over Songkick. For example, in 2013 and 2014
4 Songkick assisted a country music superstar to run over 50 artist presales and develop
5 several highly-successful marketing and charity fundraising campaigns. In 2015, the
6 artist wanted to schedule a second show for a major arena on the artist's upcoming tour
7 and was told by Live Nation (the artist's promoter) that it would only promote a second
8 show if the artist sold over 7,000 tickets for the first show in a presale. The 8% artist
9 presale allocation imposed by Ticketmaster for this venue was far below this number.
10 Defendants therefore forced the artist to choose between running an artist presale
11 through Songkick *or* scheduling a second show at that major arena, thus tying the
12 artist's second show (and corresponding profits) to the use of Ticketmaster's artist
13 presale ticketing services and its uncapped artist presale allocations. The artist
14 therefore regretfully declined Songkick's artist presale ticketing services for the tour
15 and instead used Ticketmaster.

16 122. As discussed at length above, Live Nation's CEO and Director, Michael
17 Rapino, personally and repeatedly engaged in the anticompetitive acts giving rise to this
18 complaint. As also discussed above, other Live Nation employees joined Mr. Rapino in
19 these acts and, along with Ticketmaster, have harmed Songkick through their attempts
20 to destroy competition in the artist presale ticketing services market.

21 **C. To Enhance Their Monopoly Power, Defendants Place No Similar**
22 **Restrictions on Their Own Artist Presales**

23 123. In stark contrast to all of these restrictions stand the requirements
24 Defendants place on their own artist presale ticketing services (*i.e.*, none). In
25 advertising its presale options in 2015, Ticketmaster compared its services against "3rd
26 party" options such as Songkick. It noted that artists have "uncapped" artist presale
27 allocations for Ticketmaster-run artist presales with "unrestricted" seat locations for the
28 presale tickets. By contrast, Ticketmaster claimed that it could unfairly discriminate

1 and limit third-party-run artist presales to 8% of tickets with only 8% per price level for
2 seat locations. (Practically speaking, this meant that all of the best seats could be
3 included in a Ticketmaster-run presale, whereas Songkick-run presales could only offer
4 a mix of premium and less desirable seats from throughout the venue.) Ticketmaster
5 also claimed that artists who boycott Ticketmaster's artist presale ticketing services
6 competitors (such as Songkick) are not required to adhere to Ticketmaster's fan club
7 policy, whereas artists that refuse to boycott such third party artist presale ticketing
8 service providers must do so. Ticketmaster also assured artists who agreed to boycott
9 Ticketmaster's competitors and utilize Ticketmaster's artist presale services that they
10 would be allowed to market and sell to the general public as part of their artist presales
11 without any restriction to "fan club members." This was despite representations to
12 Songkick from Defendant executives that they would apply the fan club policy
13 uniformly to both Songkick and Ticketmaster in order to provide a level playing field.

14 124. The extent to which Defendants' actions make clear that they want the
15 artist presale ticketing services market to themselves is thus demonstrated by the
16 differences in demands they make regarding Ticketmaster-led versus Songkick-led
17 artist presales. To preserve their monopoly power, Defendants actively tell artists that
18 they will *not* seek to enforce any aspect of Ticketmaster's fan club policy for artist
19 presales handled by Ticketmaster's Artist Services or OnTour division, and they use
20 this offer as a way to distinguish Ticketmaster's artist presale services from the
21 competition (most notably, Songkick).

22 125. Defendants' escalating campaign to remove Songkick and others as a
23 threat to their monopoly power has taken its toll on Songkick's past and present
24 business within the past four years. Defendants' activities have caused many artists and
25 live music industry participants to forego using Songkick's services, even after they
26 initially indicated they were ready to do business with Songkick for their upcoming
27 tours. To avoid providing an opportunity for Defendants to further intimidate them,
28 Songkick will identify these artists, managers, and other live music industry

1 participants after a suitable protective order is put in place. Moreover, numerous other
2 artists and managers have refused to even consider using Songkick's services because
3 of the pushback they will face from Defendants if they even hint at wanting to employ
4 Songkick.

5 **Defendants' Efforts To Preserve Ticketmaster's**
6 **Monopoly Power Have Already Had Far-Reaching**
7 **Anticompetitive Effects, and They Will Continue To Increase if Not Enjoined**

8 126. Despite all of Defendants' conscious efforts to undercut Songkick's
9 services, many artists faced with the choice between Songkick and Ticketmaster will
10 typically choose (or attempt to choose) Songkick. Songkick is simply better at
11 providing artist presale ticketing services than Ticketmaster, and the value it provides to
12 the artists is far beyond what Ticketmaster can offer. However, if—or, more
13 appropriately for the majority of 2015, when—Defendants engage in anticompetitive
14 and unfair acts to threaten and coerce the artists to not use Songkick (or else suffer
15 punishment from Defendants' organization), more and more artists are compelled not to
16 conduct artist presales at all. Thus, Defendants have diminished demand in the market
overall as the result of their scorched-earth policies.

17 127. As a result of Ticketmaster's and Live Nation's anticompetitive conduct,
18 Songkick has lost (and stands to continue to lose) significant business, customers (both
19 artists and consumers), and revenues. Consumers who formerly were able to obtain
20 tickets at lower cost (and with higher quality service) from Songkick are forced to pay
21 supracompetitive prices to obtain tickets from Ticketmaster or are not able to obtain
22 them at all in the primary market, and are forced to turn to the secondary market,
23 particularly including Ticketmaster's own secondary ticketing platforms, where they
24 are charged inflated prices. Because Songkick is being shut out of the relevant market,
25 some artists that formerly used (or want to use) Songkick to sell tickets, VIP packages,
26 music, merchandise or other offerings to their fans may be forced to turn to OnTour,
27 which is Defendants' captive artist presale ticketing service provider. The result of
28 Ticketmaster's and Live Nation's efforts, working in concert with venues, is the

1 substantial lessening of competition in the relevant market, injuring both competitors
2 and consumers alike.

3 **Where the Defendants Do Not Have a Stranglehold, There Exists a Vibrant,**
4 **Competitive Market for Artist Presale Ticketing Services**

5 128. At non-Ticketmaster or Live Nation venues such as those run by AEG,
6 concert venue operators often allocate 10% or more of a show's ticket inventory to
7 artists for artist presales without any of the fan club restrictions Defendants seek to
8 unreasonably and wrongfully impose.

9 129. Concert venue operators, such as AEG, operate with economic self-interest
10 by seeking to maximize the number of tickets sold for every performance held at the
11 venue. These operators are happy to have Songkick's help with artist presales, and they
12 do not place any draconian restrictions on Songkick's ticketing services. Songkick is
13 able to sell more tickets for these venues because it is not restricted as with
14 Ticketmaster and Live Nation venues. The benefits Songkick creates then filter down
15 to all involved in the shows (making them more profitable overall) and help the artists
16 achieve their business and marketing goals. This stands in stark contrast to Defendants'
17 conduct, which places unreasonable restrictions on artist presales and is not in their
18 economic self-interest except insofar as it helps them to destroy competition and
19 maintain and/or increase their monopoly power in the market.

20 130. This difference can be seen in the fan's purchase experience for artist tours
21 that include both Defendant-controlled and non-Defendant-controlled venues. With the
22 latter—such as at AEG venues—fan club compliance is not mandated, and as a result,
23 fans may look at an artist's webpage or social media site and click on a "Buy Tickets"
24 button next to the venue of their choice. They are then immediately directed to a
25 presale page where they may directly purchase tickets from the artist. In contrast, for
26 the same artist on the same tour, a fan clicking the "Buy Tickets" button for a
27 Defendant-controlled venue is directed to a page asking the fan to join the artist's fan
28 club. If already a member, the fan must first login with a username and password. If

1 not already a member, the fan must go through a registration process and join the fan
2 club before being able to even see any details about the presale (*i.e.*, the fan must
3 complete this administrative process before knowing the ticket prices or whether tickets
4 are still available). This mandatory login process (not applicable to Ticketmaster
5 presales) increases transaction costs, can dissuade fans from purchasing, and, in any
6 event, slows down the ticket purchasing process, thereby disturbing the fan/artist
7 relationship and resulting in fewer tickets sold during the artist presale.

8 131. The unreasonable conditions imposed by Ticketmaster in the United States
9 to preserve its monopoly power may be seen by comparing its United States monopoly
10 with the live music industry in the U.K., in which Defendants have much less market
11 power in concert venue ticketing services (because they do not have exclusive dealing
12 contracts) and in concert promotions. Concert venue ticketing services are not a natural
13 monopoly. In the U.K., promoters regularly employ several different concert venue
14 ticketing service providers for the same shows, which leads to price competition among
15 and between the service providers (specifically, with respect to service charges, which
16 are dramatically lower than in the United States) and therefore lowers overall ticket
17 prices for consumers. Where promoters opt for just one concert venue ticketing service
18 instead, the competition between service providers to obtain the contract similarly
19 drives down prices for the promoter and concertgoers.

20 132. Artists at U.K. shows also receive artist presale allocations at levels
21 commensurate with what they and the promoter believe the artist can sell during a
22 presale (generally anywhere between 15-50% of the tickets).

23 **Defendants Misappropriated CrowdSurge's Confidential, Non-Public**
24 **Information**

25 133. In documents produced in discovery, Songkick has learned that
26 Defendants have, through a former CrowdSurge Senior Vice President, intentionally
27 and without authorization accessed CrowdSurge's protected computers and
28 improperly acquired and used CrowdSurge's trade secrets and confidential

1 information, including: a suite of proprietary service offerings; financial
2 information, such as ticket sales, merchandise revenues, quarterly profitability, and
3 forecasts of various kinds; cost and pricing data; customer information; and other
4 non-public information of economic value. Upon information and belief,
5 Ticketmaster used this information in order to revamp its unsuccessful Artist
6 Services division into a clone of CrowdSurge, called Ticketmaster OnTour.

7 134. At the heart of Defendants' misappropriation lies Stephen Mead, a
8 former CrowdSurge Senior Vice President. Within a year after leaving
9 CrowdSurge, and signing a Separation Agreement obligating him to return all
10 confidential information to Crowdsurge and precluding him from disclosing
11 confidential CrowdSurge information, Mead joined a Ticketmaster-owned company
12 called TicketWeb and, thereafter, Ticketmaster's Artist Services division. Upon
13 joining Ticketweb (and, later, Ticketmaster's Artist Services Division), Mead
14 brought with him and disseminated to his colleagues and superiors Crowdsurge's
15 confidential information; Mead also provided his colleagues and superiors unlawful
16 access to CrowdSurge's protected computers in violation of the Computer Fraud and
17 Abuse Act, 18 U.S.C. § 1030 *et seq.*

18 135. More specifically, within months after joining TicketWeb,
19 Ticketmaster Senior Vice President Zeeshan Zaidi, with whom Mead shared an
20 office suite, induced Mead to share, *inter alia*, CrowdSurge's confidential service
21 offerings, financial information, and client lists with Ticketmaster's Artist Services
22 division, which Zaidi led. Zaidi's plan was to use that information to revamp
23 Ticketmaster's Artist Services division—a historically unsuccessful unit—by
24 creating a clone of CrowdSurge, called Ticketmaster OnTour, that would enable
25 Ticketmaster to “catchup” to CrowdSurge, who Defendants perceive as having the
26 “strongest [direct to consumer] managed platform” in the industry and whose
27 “[s]lick, good looking platform” and “[s]trong focus on data collection and metrics”
28 make them such a serious threat to Ticketmaster's Artist Services.

1 136. In an effort to “catchup” and “defeat” CrowdSurge, Zaidi, and others
2 employed by Defendants (including, among others, Mike Schmitt, Rich Palmese,
3 Chelsea Paulsen, Christina Peterson, and Jared Rosenberg), asked and allowed
4 Mead to use his knowledge of CrowdSurge’s internal systems to improperly access
5 those systems for purposes of monitoring CrowdSurge’s potential and actual artist-
6 clients, staying abreast of what CrowdSurge was doing and, ultimately, to “cut
7 [CrowdSurge] off at the knees.”

8 137. Despite signing a Separation Agreement forbidding him to do so, Mead
9 proved willing and eager to share the requested confidential CrowdSurge
10 information with Zaidi and others at Ticketmaster because Mead’s goal, like those
11 of Defendants generally, was to “bring down the hammer on Crowd[S]urge” and
12 “cut [CrowdSurge] off at the knees” using whatever means necessary.

13 138. Although the full extent of Defendants’ use of CrowdSurge’s
14 confidential, non-public information is not yet known, discovery taken to date
15 reveals that said information was shared with and presented to Defendants’
16 executives—including, among others, Live Nation’s CEO, Michael Rapino, and
17 Ticketmaster’s President of North America Operations, Jared Smith—as part of
18 Defendants’ concerted efforts to copy CrowdSurge and thereby “beat[]
19 CrowdSurge.” Defendants also used CrowdSurge’s confidential and proprietary
20 information, including CrowdSurge’s business plans, client lists, financial
21 information, and artist pipelines, to “size up” CrowdSurge as a business (and threat).

22 **Mead’s Employment History And Separation Agreement With CrowdSurge**

23 139. Stephen Mead began working at CrowdSurge in 2010 and was the
24 company’s first employee in the United States. Mead was originally hired as
25 CrowdSurge’s General Manager of North America, but he subsequently transitioned
26 to the company’s Senior Vice President of Global Operations.

1 140. Mead “served as both the general manager and head of operations for
2 all of CrowdSurge’s U.S.-based business” and “handled everything from client
3 relations and customer support to day-to-day finances.”

4 141. In this capacity, Mead had access to trade secrets and confidential and
5 proprietary information relating to CrowdSurge, its artist-clients, its internal
6 systems, and third parties with whom CrowdSurge does or did business. That
7 confidential and proprietary information included computer records, business plans,
8 client lists, passwords, marketing strategies, financial information, royalty
9 information, contracts with third parties (and the terms thereof), contract proposals
10 and negotiations, and personnel and policy information.

11 142. In or around July 2012, CrowdSurge offered Mead a management
12 position in a different division at the company. Mead declined that offer and
13 resigned from CrowdSurge on July 26, 2012.

14 143. On August 28, 2012, Mead and CrowdSurge executed a Separation
15 Agreement reviewed by (and at the advice of) his own personal counsel
16 (“Separation Agreement”).

17 144. The Separation Agreement defines Confidential Information as
18 “confidential and proprietary information relating to CrowdSurge, its artists, its
19 business and third parties with whom CrowdSurge does or did business (including,
20 but not limited to, trade secrets, client lists, passwords, marketing strategies,
21 financial information, royalty information, contracts with third parties and the terms
22 thereof, contract proposals and negotiations, government, legislative and regulatory
23 activities, litigation matters, and personnel and policy information).”

24 145. Among other provisions, the Separation Agreement expressly prohibits
25 Mead from “either directly or indirectly mak[ing] any disclosure of Confidential
26 Information to any third party, or mak[ing] any use of Confidential Information for
27 [Mead’s] own benefit or the benefit of any third party without CrowdSurge’s prior
28 written consent.”

1 146. The Separation Agreement also obligates Mead “to return to
2 CrowdSurge all CrowdSurge property and all material or documents containing
3 Confidential Information,” including “customer lists, [] reports, files, memoranda,
4 computer access codes..., internal policies and other similar materials or documents
5 which [Mead] received or prepared or helped prepare in connection with [his]
6 employment at CrowdSurge.”⁵

7 147. Mead understood that, per the terms of the Separation Agreement, he
8 was expected to “protect” information like CrowdSurge’s profits and passwords.

9 148. Less than one year after signing the Separation Agreement and leaving
10 CrowdSurge, Mead contacted Ticketmaster employee, Greg Schmale (whose role at
11 the time was to prevent Ticketmaster’s competitors—primarily CrowdSurge—from
12 selling tickets “off platform”), to inquire about possibly working at Ticketmaster,
13 CrowdSurge’s largest competitor.

14 149. In July 2013, Mead was hired as Director of Client Development at
15 TicketWeb, a Ticketmaster company; he was promoted to Ticketmaster’s Artist
16 Services division in January 2015.

17 150. At no point while interviewing at Ticketmaster or TicketWeb, or upon
18 joining either company, did anyone warn Mead not to use or bring with him any of
19 CrowdSurge’s confidential information or documents. Similarly, Mead could not
20 recall anyone at Ticketmaster asking to see a copy of his Separation Agreement.
21 Nor did Ticketmaster ever instruct Mead not to share confidential CrowdSurge
22 information or documents that he may have had in his possession.

23 151. While employed at TicketWeb, Mead shared an office suite with
24 Zeeshan Zaidi, Ticketmaster’s Senior Vice President. As set forth below, Zaidi on

25 ⁵ The Separation Agreement also prohibits Mead from taking “any public or
26 private action or mak[ing] any public or private statements... that criticizes,
27 ridicules, disparages, or is derogatory to [CrowdSurge] or its employees, services,
28 reputations, officers, financial status, or that damages [CrowdSurge] in any of their
respective business relationships...” Mead has since admitted to making negative
statements about CrowdSurge, in violation of this provision.

1 multiple occasions encouraged Mead to disseminate CrowdSurge’s valuable, non-
2 public trade information—oftentimes for use in presentations prepared for
3 Defendants’ executives and, upon information and belief, as part of Defendants’
4 efforts to defeat CrowdSurge, who Defendants perceive as a serious threat and as
5 their “[m]ain rival” to Ticketmaster’s Artist Services.

6 152. Mead—who admitted that he had a “dislike” for CrowdSurge
7 following his departure from the company, and who ruminated over ways to “cut
8 [CrowdSurge] off at the knees” and “bring down the hammer” on CrowdSurge—
9 happily obliged with Zaidi’s requests.

10 **Defendants First Ask Mead To Share CrowdSurge’s Non-Public Trade**
11 **Information For Purposes of “Benchmarking” CrowdSurge Against**
12 **Ticketmaster**

13 153. Despite his obligations under the Separation Agreement, Mead
14 admitted that he never deleted confidential CrowdSurge information from his laptop
15 after leaving the company. Instead, it is undisputed that Mead retained more than
16 85,000 CrowdSurge documents after leaving the company, including, *inter alia*,
17 hundreds of CrowdSurge’s confidential weekly head of department reports
18 containing valuable, non-public strategic and financial information; dozens of
19 usernames and passwords to confidential CrowdSurge tools; client lists;
20 presentations to CrowdSurge’s Board of Directors; contracts; and internal corporate
21 business plans and strategies.

22 154. Ticketmaster failed to take any precautions to ensure that Mead was not
23 using any of this confidential CrowdSurge information for Ticketmaster’s
24 competitive and/or commercial advantage. Instead, as Songkick discovered through
25 documents recently produced in this litigation, various Ticketmaster employees,
26 including Mead’s suite-mate, Zeeshan Zaidi (Ticketmaster’s Senior Vice President),
27 repeatedly invited Mead to share non-public, confidential CrowdSurge information
28 with Ticketmaster.

1 155. For example, on January 8, 2014, Zaidi emailed Greg Schmale, Vice
2 President of Ticketmaster's Music Services division, (copying Mead) describing a
3 conversation between Zaidi and Mead about "benchmarking CrowdSurge" against
4 Ticketmaster's offerings. Zaidi proposed that the three of them "have a call
5 tomorrow" to discuss.

6 156. The very next day, January 9, 2014, Mead sent the following email to
7 Zaidi and Schmale: "*So ahead of our call later today I've pulled together some*
8 *info from CS that might be useful as [] insight into their operations.*" Mead's
9 email specifically provided information which—consistent with Zaidi's goal—
10 would help Ticketmaster "benchmark" CrowdSurge's internal processes and
11 confidential information against Ticketmaster's own offerings.

12 157. First, Mead's email included CrowdSurge's Booking Fee Calculator,
13 which, in Mead's words, provided a "full breakdown of the fees [CrowdSurge]
14 appl[ies] to the [] normal ticket prices." Mead's email also included CrowdSurge's
15 Account Management Tool, which, in Mead's words, was used to give
16 CrowdSurge's "biz-dev and client services guys an idea of the profitability of [a]
17 tour if 100% of the allocation sold through."

18 158. Most significantly, Mead's email included usernames and passwords
19 granting access to CrowdSurge's "Client-Facing Reporting Toolbox" for three
20 artists that had previously used CrowdSurge to conduct presales. CrowdSurge's
21 client-facing toolbox offers artists a host of financial, operational, marketing, and
22 customer data related to an artist's CrowdSurge-operated presales. That information
23 includes presale ticketing revenue; merchandise revenue associated with a presale;
24 personal information belonging to customers who purchased presale tickets or
25 merchandise, or otherwise joined a fan club; maps displaying where fans live and
26 how far they travel for concerts; presale allocation sell-through rates; and several
27 other important metrics, including information allowing artists to understand (and
28 monetize) the timing and frequency of ticket-buying activity on their websites. It is

1 a customized, private toolbox of valuable information that is provided exclusively to
2 a CrowdSurge artist-client and the artist-client's representatives; it was not shared
3 with CrowdSurge's competitors or with the general public; and Defendants knew or
4 had reason to know it had been improperly obtained.

5 159. More specifically, Mead's January 9, 2014 email included a link to
6 CrowdSurge's client-facing toolbox portal (<http://www.crowdsurge.com/toolbox>)
7 and, more importantly, ***usernames and passwords granting access to three specific***
8 ***artist toolboxes***. These usernames and passwords, as well as the underlying
9 information they were designed to protect, were not known by or disseminated to
10 the public, and Mead was aware of these usernames and passwords solely because
11 of his previous employment at CrowdSurge, where he was "responsible for setting
12 up new accounts." Defendants therefore knew, or had reason to know, that this
13 information had been misappropriated through improper means. Indeed, Mead's
14 email explicitly warned Zaidi and Schmale: "***I must stress that as this is access to a***
15 ***live CS tool I would be careful in what you click on as it would be best not the***
16 ***[sic] giveaway that we are snooping around***" (emphasis in original).

17 160. Nevertheless, Mead's January 9 email offered to "whizz" Zaidi and
18 Schmale "through [the toolboxes] *again*"—suggesting that Mead had shared this
19 information with Zaidi and Schmale on prior occasion(s)—and also invited Zaidi
20 and Schmale to "***feel free to screen-grab the hell out of [CrowdSurge's] system.***"
21 As set forth below, this is precisely what Zaidi did: multiple Ticketmaster
22 presentations—including a strategy presentation prepared for Live Nation's CEO
23 Michael Rapino—featured screenshots of confidential information from
24 CrowdSurge's password-protected toolboxes.

25 161. After receiving Mead's January 9, 2014 email, neither Zaidi nor
26 Schmale asked Mead if the information contained therein was confidential or
27 included trade secrets. Nor did anyone at Ticketmaster inform Mead that they did
28 not want to see confidential Crowdsurge trade information.

1 162. Instead, Defendants were all too happy to use CrowdSurge's
2 confidential information to better Ticketmaster's position vis-à-vis its much smaller
3 competitor, and they looked through and used the information multiple times.
4 Indeed, Zaidi immediately responded to Mead's January 9, 2014 email containing
5 CrowdSurge's toolbox passwords with a resounding, "Awesome – thanks Stephen!"

6 163. By *the very next* day after Mead's improper disclosures, Zaidi had
7 already incorporated CrowdSurge's confidential, password-protected trade
8 information into a presentation seeking to compare Ticketmaster's struggling Artist
9 Services division to CrowdSurge and TicketsToday (which is currently owned by
10 Ticketmaster): on January 10, 2014, Zaidi circulated a presentation titled "Artist
11 Ticketing," to Schmale, Jared Smith (Ticketmaster's President of North America),
12 Matt Shearer (who, upon information and belief, is Ticketmaster's Senior Vice
13 President Small Venues & Attractions), and Geordie Stewart (who, upon
14 information and belief, was Ticketmaster's Senior Vice President of Strategy &
15 Analytics). Zaidi's cover email was unabashed in noting that its attached "Artist
16 Ticketing" presentation contained "benchmarking" information about CrowdSurge,
17 courtesy of "Stephen Mead."

18 164. More specifically, the "Artist Ticketing" presentation included a
19 section titled "Benchmarking/Screenshots." That section featured screenshots from
20 CrowdSurge's password-protected client toolboxes that, one day earlier, Mead had
21 emailed and encouraged Zaidi and Schmale to "screen-grab the hell out of."

22 165. For example, slide 14 of the January 10, 2014 "Artist Ticketing"
23 presentation, which is titled "CrowdSurge Artist Platform: Summary View,"
24 featured a screenshot from Crowdsurge's password-protected client toolbox
25 displaying a financial and operational summary of the presales CrowdSurge ran for
26 a particular artist's 2011 North American Tour. This summary is valuable to artists
27 because it enables them to see their presale revenues, rebates, allocations, and sell-
28 through rates, both by show and across an entire tour. It furthermore was valuable

1 to CrowdSurge by virtue of its confidentiality because it enabled CrowdSurge and
2 its artist-clients to track, in real-time, their overall profitability, success, and
3 concerts in need of additional marketing or promotion. This information was
4 inaccessible without the usernames and passwords Mead circulated (in violation of
5 his obligations under the Separation Agreement) just one day earlier.

6 166. Similarly, slides 15 and 16 of the January 10, 2014 “Artist Ticketing”
7 presentation, titled “CrowdSurge Artist Platform: View by Show (A)” and
8 “CrowdSurge Artist Platform: View by Show (B),” respectively, featured
9 screenshots from CrowdSurge’s password-protected client toolbox. Slide 15
10 displays CrowdSurge’s attendance map, which artists valued because it enabled
11 them to track where fans live and how far they traveled for the artist’s concerts,
12 which, among other things, gave artists guidance as to possible locations for future
13 concerts and other travel and ticketing package opportunities. Slide 16 was an
14 event-level presale ticket sales graph, a tool that is valuable because it allows artists
15 to see how a particular event was selling over time, when fans were purchasing
16 tickets, and the strength of a particular market. Neither the screenshotted attendance
17 map nor event-level ticket sales graph were accessible without the usernames and
18 passwords Mead circulated (in violation of his obligations under the Separation
19 Agreement) just one day earlier.

20 167. Finally, slide 17 of the January 10, 2014 “Artist Ticketing,” titled
21 “CrowdSurge Artist Platform: Access to fan info,” featured a screenshot from
22 CrowdSurge’s password-protected toolbox displaying email addresses of customers
23 who either purchased merchandise or presale tickets to one or more concerts during
24 CrowdSurge-operated presales, or who otherwise joined a particular artist’s fan
25 club. This sort of consumer data, which CrowdSurge (unlike Ticketmaster at the
26 relevant time) allows its artist-clients to export for marketing and promotional
27 purposes, is invaluable to artists for the reasons set forth in, *e.g.*, paragraphs 9, 26,
28 57, *supra*. It is also information that CrowdSurge was, in accordance with its

1 Privacy Policy, entrusted to protect. This information was inaccessible without the
2 usernames and passwords Mead circulated (in violation of his obligations under the
3 Separation Agreement) just one day earlier.

4 168. Songkick discovered Defendants' misappropriation and use of
5 CrowdSurge's trade secrets through documents Defendants recently produced in this
6 litigation.

7 **Months Later, Defendants Again Induced Mead To Share CrowdSurge's Non-**
8 **Public Trade Information, This Time In Connection With A Presentation**
9 **Prepared For Live Nation's CEO, Michael Rapino, Designed To "Beat[]**
10 **CrowdSurge"**

11 169. On May 8, 2014, Live Nation CEO Michael Rapino emailed Zaidi,
12 "Zeeshan – Crowd surge [sic] pushing hard – I need to see exact plan for our fan
13 club product..."

14 170. The impetus for Mr. Rapino's request was Defendants' desire to
15 "revamp[]" Ticketmaster's Artist Service division—which "had done a pretty bad
16 job historically"—in an effort to "catchup" to CrowdSurge, whose superior
17 offerings include a "[s]lick, good looking platform" and a "[s]trong focus on data
18 collection and metrics," and who Defendants perceive as having the "strongest
19 [direct to consumer] managed platform" in the industry and Ticketmaster Artist
20 Service's "[m]ain rival."

21 171. Accordingly, three days after (and on the same chain containing) Mr.
22 Rapino's May 8th request, Zaidi emailed Schmale and Smith that he was "preparing
23 a presentation for Rapino re[garding] all artist services platforms and the
24 CrowdSurge strategy—per his request below." Zaidi also informed Schmale and
25 Smith that he intended to enlist Christina Peterson (Ticketmaster's Director of
26 Communications Strategy) to assist with preparing the presentation.

27 172. Shortly thereafter, on May 28, 2014, Christina Peterson emailed Mead
28 to inform him that she was "helping Zeeshan [Zaidi] prepare a deck on the artist
services business for Jared [Smith]/Rapino." Peterson also noted that she and Zaidi

1 wanted the deck to “include an estimate of CrowdSurge’s business” in order to “get
2 an idea of the size of [CrowdSurge’s] business so we know what is on the table for
3 us to try and win back with our new service offering.” To that end, Peterson’s email
4 specifically asked Mead for a breakdown of CrowdSurge’s business “between TM
5 venues vs. non TM venues” for both 2012 and 2013.

6 173. Much like Mead’s near-immediate response to Zaidi’s January 8, 2014
7 email seeking “benchmarking” information, *see* paragraphs 155-160, *supra*, Mead
8 responded to Peterson’s May 28, 2014 request the very next day. And once again,
9 Mead proved willing and eager to share CrowdSurge’s non-public trade information
10 with his new employer.

11 174. More specifically, *Mead’s May 29, 2014 email admitted that he had*
12 *“a whole bunch of [CrowdSurge’s] Weekly Heads of Department reports that*
13 *included the projections vs real sales across tickets and merch[andise] in all*
14 *territories that [CrowdSurge] operated in.”* Mead attached CrowdSurge’s “Week
15 25” Head of Department report to his email (“Week 25” corresponding to the week
16 of June 18, 2012 – June 24, 2012) . Among other confidential CrowdSurge
17 information, that weekly report included:

- 18 • CrowdSurge’s global profits derived from ticket and merchandise sales
19 for the week of June 18-24, 2012;
- 20 • A summary of CrowdSurge’s ticket sales and profitability for the first
21 quarter of 2012;
- 22 • A summary of CrowdSurge’s merchandise sales and profitability for
23 the second quarter of 2012;
- 24 • A forecast of CrowdSurge’s estimated profitability for the first quarter
25 of 2012;
- 26 • An analysis of the number of budgeted versus actual tickets sold in the
27 second quarter of 2012, as well as comparisons of that performance against
28 the second quarters of 2010 and 2011;

- CrowdSurge’s “client pipeline,” which identifies the potential artist-clients and business partnerships that CrowdSurge was pursuing, as well as the status of those pursuits, the relative sales priority of those pursuits, the level of platform customization required for each account, the size of the potential accounts in terms of ticket sales and volumes, and the estimated revenues CrowdSurge expected to receive from them.

Mead understood that much of this information related to CrowdSurge’s profitability and was “internal” CrowdSurge information.⁶

175. In addition to the information listed above, Mead’s May 29 email also attached a document that he described as CrowdSurge’s “[g]rowth plan for 2012/2013.”⁷ It also contained CrowdSurge’s year-over-year gross and net profitability in Europe and North America from 2008 through 2012, as well as a forecast of CrowdSurge’s European and North American gross and net profits for 2012-13. None of this valuable information was public.

176. Even the *body* of Mead’s email disclosed valuable, confidential trade secrets concerning CrowdSurge’s operations. In response to Peterson’s request for a breakdown of CrowdSurge’s business “between TM venues vs. non TM venues” in 2012 and 2013, Mead noted that in 2012, it was a “50/50 split” (because “2012 was when TM first got aggressive in its handling of [CrowdSurge, which had] an effect on their pre-sale allocation that year”), but that in “2013/2014[,] TM vs non TM venues would show an increase in the amount of TM venues that [CrowdSurge] would be requesting ticketing allocations for...”

177. After describing and/or attaching all of the non-public trade information described in paragraphs 174-176, *supra*, Mead concluded his May 29,

⁶ There is no dispute that these were in fact belong CrowdSurge’s documents. Mead authenticated them as such, and even Defendants’ counsel acknowledged that they were Songkick’s documents.

⁷ Evidently, Mead had also shared a copy of this document with Zaidi “at the beginning of the year.”

1 2014 email with the following message: “*Hopefully the attached will give you an*
2 *insight in the [CrowdSurge] business*, if you need more info please drop me a note
3 of [sic] give me a call directly.”

4 178. Mead understood that this insight would be shared with Messrs.
5 Rapino, Live Nation’s CEO, and Smith, Ticketmaster’s President. Indeed, in his
6 May 29 email responding to Peterson’s original request, Mead wrote that Zaidi had
7 “mentioned the[] deck that was being created” for Messrs. Rapino and Smith and
8 that Peterson might “need some info from me for this [presentation].”

9 179. Despite knowing or having reason to know that the valuable,
10 confidential information attached to Mead’s May 29, 2014 email was acquired
11 through improper means—and that such information was ultimately destined for
12 Defendants’ CEO and President—at no point did Zaidi ever ask whether Mead was
13 violating his Separation Agreement with CrowdSurge by sharing this confidential
14 information. Nor did he care. As Mead testified under oath, Zaidi never told him
15 that he should not be sharing confidential CrowdSurge information with his new
16 Ticketmaster and Live Nation colleagues.

17 **CrowdSurge’s Trade Secrets are Presented To Live Nation’s CEO**

18 180. Based on documents recently produced by Defendants, Zaidi first
19 circulated a “draft version of the Artist Services deck for Michael” on June 16,
20 2014—less than three weeks after Mead’s May 29, 2014 response to Peterson’s
21 email seeking confidential CrowdSurge information for use in the “Jared/Rapino”
22 presentation. In that draft, Zaidi’s notes to Smith state “let me know if you need an
23 intro to Stephen Mead for [C]rowd[s]urge info.”

24 181. A final copy of “Ticketmaster Artist Services Strategy” presentation
25 was presented to Mr. Rapino in June 2014. In that final version, Mr. Rapino was
26 presented with Zaidi’s (and thus Artist Services’) strategy for “beating
27 CrowdSurge.” Consistent with Mr. Rapino’s testimony that Ticketmaster needed to
28 revamp its historically poor artist service division and “catchup” to CrowdSurge’s

1 artist offerings, Zaidi's presentation recommended that Ticketmaster offer more
2 "competitive tools & technology" to "combat[] the CrowdSurge threat."
3 Ticketmaster developed its strategy for creating those tools by reviewing and
4 comparing their own offerings to CrowdSurge's confidential information.

5 182. To underscore the particular tools and technologies that he believed
6 were necessary for catching-up to, combatting, and ultimately defeating
7 CrowdSurge, Zaidi's presentation featured screen shots of CrowdSurge's client
8 toolboxes that he and/or others—at Mead's invitation—accessed and "grab[bed]" via
9 the usernames and passwords circulated in Mead's January 9, 2014 email.

10 183. For example, slide 11 of the "Ticketmaster Artist Services Strategy"
11 presentation featured a screenshot from CrowdSurge's password-protected client
12 toolbox displaying a financial and operational summary of the presales CrowdSurge
13 ran for a particular artist's 2011 North American Tour. Similarly, slide 12 featured
14 a screenshot from CrowdSurge's password-protected client toolbox displaying an
15 attendance map that artists used to track where fans live and how far they would
16 travel for the artist's concerts. Finally, slide 14 of the "Ticketmaster Artist Services
17 Strategy" featured a screenshot from CrowdSurge's password-protected toolbox
18 displaying email addresses of customers who purchased tickets to one or more
19 concerts during CrowdSurge-operated presales.

20 184. Accordingly, the "Ticketmaster Artist Services Strategy" deck prepared
21 for and presented to Mr. Rapino contained CrowdSurge's valuable non-public
22 information. That confidential information was available to Defendants only
23 through Mead, who, at Zaidi's (and his subordinates') request, willingly shared it
24 with his colleagues.

25 **Defendants Continued To Leverage Mead's Knowledge of CrowdSurge's**
26 **Trade Secrets To Monitor And Copy CrowdSurge Throughout 2014 and 2015**

27 185. In addition to sharing non-public trade information for purposes of
28 benchmarking and ultimately strategizing to defeat CrowdSurge, Mead also

1 routinely relied on knowledge gained during his employment at CrowdSurge to
2 monitor his former employer's clients and capabilities. This was part of Mead's
3 personal vendetta (and Ticketmaster's collective desire) to "cut [CrowdSurge] off at
4 the knees," "bring down the hammer" on CrowdSurge, and ultimately copy and
5 thereby defeat CrowdSurge.

6 186. Almost immediately after he arrived at TicketWeb, Mead began
7 sending his colleagues at Ticketmaster—including Zaidi, Schmitt, Rich Palmese,
8 Jared Rosenberg, Scott Kleven, Chelsea Paulsen, Christina Peterson, and others—
9 URLs to webpages of ticketing "stores" that CrowdSurge had customized for
10 specific artist-clients and potential artist-clients. Many of these URLs were "test
11 sites," or sites that did not yet contain live, active presales, but which CrowdSurge
12 instead built to create campaigns for its artist-clients' then-unannounced tours, or for
13 pitches to potential artist-clients. More specifically, test sites featured and/or could
14 be used to derive a wide-array of valuable, non-public operational, promotional, and
15 financial information—including the dates, locations and estimated value of artists'
16 unannounced (but forthcoming) tours; proprietary offerings CrowdSurge intended to
17 use on particular tours it was hoping to win; or even innovative products and
18 services that CrowdSurge was developing but had not yet brought to market. Much
19 of the confidential artist information contained in these tests sites (for example, tour
20 announce dates and locations) was closely guarded by CrowdSurge's artist-clients,
21 who trusted CrowdSurge to protect said information. As such, CrowdSurge
22 intended these test sites to remain confidential, and certainly did not intend for them
23 to be accessed by its competitors to CrowdSurge's detriment and in violation of
24 CrowdSurge's artist-clients' expectations that the information contained on those
25 test sites would remain confidential.

26 187. Ticketmaster's awareness of CrowdSurge's test sites containing
27 information regarding unannounced (but forthcoming) tours, gave Ticketmaster a
28 consistent opportunity (which it repeatedly seized) to interfere with the artists

1 CrowdSurge was pitching and/or transacting with long before those artists' presales
2 went live. This proved to be a very effective tactic at disrupting CrowdSurge's
3 business and causing several artists to break off the presales they had been
4 considering or had already committed to run with CrowdSurge.

5 188. One of earliest examples of Mead's monitoring of Crowdsurge's
6 ticketing stores came on November 18, 2013, when Mead sent Shearer and Zaidi an
7 email stating, "Just a head's up on what [CrowdSurge is] up to. This is the direct
8 URL to the iframe ticketing page they've built for [a particular artist]." Mead's
9 email also noted that although the URL was just a "test listing," CrowdSurge was
10 "obviously looking to get some dates live for ticket sales."

11 189. Mead sent similar emails throughout 2014 and 2015. On January 23,
12 2014, for instance, Mead sent an email to Zaidi and Schmale with a subject "More
13 CS insider dealings." The email included URLs to CrowdSurge "test sites" built for
14 two particular artists who Mead believed "might be worth looking at" because
15 CrowdSurge was "pitching" their tours.

16 190. Similarly, in a July 14, 2014 email to Zaidi, Schmale, and Jared
17 Rosenberg, Mead wrote: "It's been a while since I sent one of these over on what
18 the scallywags over at CS are working on." Mead's email included twelve URLs to
19 stores built for various artists. Many of these sites were "test sites."

20 191. So voluminous and time-consuming was Mead's monitoring of
21 CrowdSurge that, in January 2015, Zaidi informed Mead that Chelsea Paulsen
22 would be "taking this over," and *asked Mead "to get her up to speed on monitoring*
23 *[C]rowdsurge, the link numbering system, etc."*

24 192. By the following month, Mead had successfully taught Paulsen how to
25 track and monitor CrowdSurge. On February 25, 2015, Paulsen circulated a
26 "CrowdSurge list" containing links to stores that CrowdSurge had built for more
27 than **125 artists**. Paulsen also indicated that she would "continue to update this
28 weekly."

1 193. Despite training Paulsen how to monitor CrowdSurge, Mead
2 nevertheless continued to personally “trawl over CrowdSurge’s sites” and circulate
3 his findings. Mead’s discoveries included CrowdSurge test sites for some of
4 music’s biggest acts. Oftentimes, Mead’s URL emails would be accompanied with
5 explicit notes to his colleagues instructing them to reach out to and put pressure on
6 artists to use Ticketmaster—not CrowdSurge—for presales. Upon information and
7 belief, this tactic was ultimately responsible for some artists’ decisions to break off
8 the presales they had been considering or had already committed to run with
9 CrowdSurge. Indeed, of the dozens of tours that Ticketmaster claims to have “won”
10 from CrowdSurge/Songkick in 2015, many were for artists whose stores Mead
11 circulated. Unsurprisingly, Mead’s colleagues, including Schmitt, Palmese, and
12 Rosenberg, routinely expressed appreciation to Mead for sharing links to these
13 stores, and/or teaching them how to access the stores on their own accord.

14 194. Mead clearly understood the value of these sites, as well as
15 CrowdSurge’s intent that they remain confidential. Indeed, Mead referred to these
16 sites as “CS insider dealings.” Mead also instructed Zaidi, Palmese, Schmitt,
17 Kleven, Paulsen, and Sloane Logue not to discuss the sites with CrowdSurge: “[a]s
18 they are just test URL[s] for now, let’s hold off showing our hand on what we know
19 [CrowdSurge is] working on.”

20 195. Furthermore, although Mead testified that these sites were publicly
21 accessible—the URLs were not password-protected and were, at the time,
22 sequentially numbered such that a person who knew the system CrowdSurge used
23 could gain improper access to the private URLs on a protected computer server
24 connected to the internet—he also admitted that, at least until he shared his
25 knowledge with Paulsen, no one else in his division knew how to monitor or even
26 go about monitoring CrowdSurge through the link numbering system. It was
27 therefore solely because of Mead’s prior employment at CrowdSurge (and
28

1 understanding of his former company's system) that Ticketmaster had access to
2 these sites.

3 196. Mead's persistent monitoring of CrowdSurge's URLs was hardly the
4 only way that he tried to "bring down the hammer" on his former employer. For
5 example, in an email dated February 24, 2015 and titled "CrowdSurge-like iFrame
6 ticketing page solution," Zaidi asked Mead "to create a requirements documents" to
7 achieve a CrowdSurge-like solution because "[w]e need to be able to offer this
8 solution."

9 197. True to form, Mead (again) proved willing to assist. On March 2, 2015
10 he responded to Zaidi's request and attached a document containing "[a]n example
11 of what CrowdSurge supply [sic] to artists to embed the iframe." As Mead noted in
12 his email, the purposes of this example was to "allow [Ticketmaster] to compete
13 directly with the likes of CrowdSurge."

14 198. Finally, Songkick's investigation of the more than 85,000 CrowdSurge
15 documents found on Mead's computer revealed hundreds of confidential
16 CrowdSurge weekly head of department reports containing valuable, non-public
17 strategic and financial information; dozens of usernames and passwords to
18 confidential CrowdSurge tools; client lists; presentations to CrowdSurge's Board of
19 Directors; contracts; and internal corporate business plans and strategies. Although
20 the full extent of Defendants' use of this information is not yet known, upon
21 information and belief, an untold number of these documents were shared with
22 Defendants.

23 **Songkick Is Damaged By Defendants Unlawful Conduct**

24 199. Through Defendants' misappropriation and use of CrowdSurge's trade
25 secrets, Songkick has been harmed in numerous ways.

26 200. First, by knowingly and improperly taking and using CrowdSurge's
27 valuable, non-public suite of proprietary service offerings—such as the tools in
28

1 CrowdSurge's artist toolbox—Defendants have impaired the value of Songkick's
2 trade secret information.

3 201. Second, Defendants utilized the confidential information Mead
4 misappropriated from CrowdSurge in order to revamp Ticketmaster's Artist
5 Services division—including through the creation of Ticketmaster OnTour, which
6 cloned CrowdSurge's superior product offerings and business model, including
7 information found on the customized stores CrowdSurge built for its artist-clients
8 and potential clients. Similarly, Ticketmaster ultimately used that confidential, non-
9 public information to block dozens of artists from working with CrowdSurge and
10 force them onto Ticketmaster's platform. By using CrowdSurge's confidential
11 information, and interfering with dozens of CrowdSurge's artist-clients, Defendants
12 have been unjustly enriched and have, in addition, caused Songkick to lose
13 substantial revenue including but not limited to revenue from artists whose tours
14 CrowdSurge lost following Ticketmaster's misappropriation of trade secrets.

15 202. Third, Defendants' misappropriation of CrowdSurge's trade secrets has
16 caused and is continuing to cause Songkick irreparable harm, including the loss of
17 customer goodwill, and interference with Songkick's contractual and prospective
18 economic advantage, as hereinafter alleged.

19 **CLAIMS FOR RELIEF**

20 **FIRST CLAIM FOR RELIEF**

21 **(Monopolization, Sherman Act, Section 2, 15 U.S.C. § 2)**

22 **(against All Defendants)**

23 203. Songkick repeats and realleges each and every allegation of this Complaint
24 as if fully set forth herein.

25 204. Defendants have willfully acquired and maintained monopoly power for
26 Ticketmaster in the relevant markets for artist presale ticketing services and concert
27 venue ticketing services.
28

1 205. Ticketmaster possesses monopoly power in the relevant market for artist
2 presale ticketing services. Ticketmaster has the power to control prices or exclude
3 competition in the relevant market.

4 206. Ticketmaster has market share of approximately 80% of each of the
5 relevant markets for artist presale ticketing services and concert venue ticketing
6 services.

7 207. Defendants have willfully acquired and maintained monopoly power for
8 Ticketmaster in the relevant market for artist presale ticketing services, by means of
9 predatory, exclusionary, and anticompetitive conduct, including but not limited to
10 leveraging, coercion of disloyal customers and others, tying arrangements, long-term
11 exclusive dealing arrangements, concerted refusals to deal, boycotts, and mergers and
12 acquisitions, as alleged herein.

13 Leveraging

14 208. Defendants have monopoly power in the relevant market for concert venue
15 ticketing services and in the relevant market for concert promotion services.

16 209. Defendants have used their monopoly power in those relevant markets in a
17 predatory, exclusionary, and anticompetitive manner to monopolize the artist presale
18 ticketing services market and exclude Songkick from that market, including but not
19 limited to by means of coercion of disloyal customers and others, tying arrangements,
20 long-term exclusive dealing arrangements, concerted refusals to deal, and group
21 boycotts.

22 210. Defendants have used their monopoly power to monopolize or,
23 alternatively, with a dangerous probability of monopolizing for Ticketmaster the
24 relevant market for artist presale ticketing services.

25 Coercion of and threats against disloyal customers and others

26 211. Defendants have threatened reprisals against customers and others if they
27 work with Songkick.

28 212. Defendants have coerced customers and others not to work with Songkick.

1 213. Defendants' threats and coercion have impeded Songkick's ability to
2 provide artist presale ticketing services.

3 Tying arrangements

4 214. The provision of artist presale ticketing services, concert venue ticketing
5 services, and concert promotion services are three separate services or products.

6 215. Defendants have conditioned the provision of concert venue ticketing
7 services and concert promotion services on the boycotting of Songkick and the use of
8 Ticketmaster's ticketing services for artist presales.

9 216. Defendants have sufficient economic power in the relevant market for
10 concert venue ticketing services and the relevant market for concert promotion services
11 to enable them to restrain trade in the relevant market for artist presale ticketing
12 services.

13 217. Defendants' conduct has affected a not insubstantial amount of interstate
14 commerce in the provision of artist presale ticketing services.

15 218. Defendants' conduct has had an anticompetitive effect in the relevant
16 market for artist presale ticketing services.

17 Exclusive dealing arrangements

18 219. Defendants have entered into long-term exclusive dealing arrangements
19 with venues with respect to the provision of concert venue ticketing services.

20 220. Defendants' arrangements have had the effect of foreclosing competition
21 in a substantial share of the line of commerce affected and the relevant market for artist
22 presale ticketing services (and, alternatively, from the primary ticketing services
23 market), including but not limited to by excluding Songkick from the provision of artist
24 presale ticketing services.

25 221. Defendants' arrangements cannot be circumvented.

26 222. Defendants' arrangements with major concert venues are of long duration
27 and not easily terminable as a matter of practical economics.

28 223. Defendants have coerced venues to enter into these arrangements.

1 224. Defendants' arrangements are not the product of competition.

2 225. Defendants' arrangements have had the effect of substantially lessening
3 competition and tending to create a monopoly in the relevant market for artist presale
4 ticketing services and concert venue ticketing services.

5 Concerted refusals to deal and group boycotts

6 226. Defendants have induced and coerced artists, venues, and promoters to
7 refuse to deal with and to boycott Songkick.

8 227. Defendants' conduct has foreclosed access to the relevant market for artist
9 presale ticketing services, which is necessary to enable Songkick to compete.

10 228. Ticketmaster possesses a dominant position in the relevant market for
11 artist presale ticketing services and concert venue ticketing services.

12 229. Defendants' conduct is not justified, because their conduct is not intended
13 to enhance overall efficiency and to make the relevant market more efficient.

14 Mergers and acquisitions

15 230. Defendants' mergers and acquisitions, including but not limited to the
16 merger of Ticketmaster and Live Nation, have had the effect of substantially lessening
17 competition and tending to create a monopoly in the relevant markets.

18 231. Defendants' conduct alleged above has had an anticompetitive effect in the
19 relevant markets.

20 232. Defendants' conduct alleged above has no legitimate business purpose or
21 procompetitive effect.

22 233. Defendants' conduct has had a substantial effect on interstate commerce.

23 234. Live Nation promoted, encouraged, aided, assisted, directed, and/or
24 controlled Ticketmaster's conduct alleged above.

25 235. Songkick has been and will be injured in its business or property as a result
26 of Defendants' conduct.

27
28

1 236. Songkick has suffered and will suffer injury of the type that the antitrust
2 laws were intended to prevent. Songkick has been and will be injured by the harm to
3 competition as a result of Defendants' conduct.

4 **SECOND CLAIM FOR RELIEF**

5 **(Attempted Monopolization, Sherman Act, Section 2, 15 U.S.C. § 2)**

6 **(against All Defendants)**

7 237. Songkick repeats and realleges each and every allegation of this Complaint
8 as if fully set forth herein.

9 238. Defendants have engaged in predatory, exclusionary, and anticompetitive
10 conduct, including but not limited to leveraging, coercion of disloyal customers and
11 others, tying arrangements, long-term exclusive dealing arrangements, concerted
12 refusals to deal, group boycotts, and mergers and acquisitions.

13 239. Defendants' conduct has had an anticompetitive effect in the relevant
14 market for artist presale ticketing services and concert venue ticketing services.

15 240. Defendants' conduct has no legitimate business purpose or procompetitive
16 effect.

17 241. Defendants have engaged in that conduct with the specific intent of
18 monopolizing the relevant market artist presale ticketing services and concert venue
19 ticketing services.

20 242. Defendants have engaged in that conduct with a dangerous probability of
21 monopolizing the relevant market for artist presale ticketing services.

22 243. Defendants' conduct has had a substantial effect on interstate commerce.

23 244. Live Nation promoted, encouraged, aided, assisted, directed, and/or
24 controlled Ticketmaster's conduct alleged above.

25 245. Songkick has been and will be injured in its business or property as a result
26 of Defendants' conduct.

1 246. Songkick has suffered and will suffer injury of the type that the antitrust
2 laws were intended to prevent. Songkick has been and will be injured by the harm to
3 competition as a result of Defendants' conduct.

4 **THIRD CLAIM FOR RELIEF**

5 **(Sherman Act, Section 1, 15 U.S.C. § 1)**

6 **(against All Defendants)**

7 247. Songkick repeats and realleges each and every allegation of this Complaint
8 as if fully set forth herein.

9 248. As alleged above, Defendants and various venues, promoters, and others
10 have entered into one or more contracts, combinations, or conspiracies to unreasonably
11 restrain trade, to control prices or exclude competition, and to willfully acquire and
12 maintain monopoly power for Ticketmaster in the relevant market artist presale
13 ticketing services and concert venue ticketing services.

14 249. Defendants have induced or coerced various venues, promoters, and others
15 to enter into one or more contracts, combinations, or conspiracies to unreasonable
16 restrain trade, to control prices or exclude competition, and to willfully acquire and
17 maintain monopoly power for Ticketmaster in the relevant market for artist presale
18 ticketing services and concert venue ticketing services.

19 250. As alleged herein, Defendants have conditioned the provision of services
20 and access to venues over which they hold market power on the boycotting of Songkick
21 and the use of Ticketmaster's artist presale ticketing services.

22 251. These contracts, combinations, or conspiracies include but are not limited
23 to tying arrangements, long-term exclusive dealing arrangements, concerted refusals to
24 deal, group boycotts, and mergers and acquisitions.

25 252. Defendants' conduct has had an anticompetitive effect in the relevant
26 market for artist presale ticketing services and concert venue ticketing services.

27 253. Defendants' conduct has no legitimate business purpose or procompetitive
28 effect.

1 254. Defendants' conduct has had a substantial effect on interstate commerce.

2 255. Live Nation promoted, encouraged, aided, assisted, directed, and/or
3 controlled Ticketmaster's conduct alleged above.

4 256. Songkick has been or will be injured in its business or property as a result
5 of Defendants' conduct.

6 257. Songkick has suffered and will suffer injury of the type that the antitrust
7 laws were intended to prevent. Songkick has been and will be injured by the harm to
8 competition as a result of Defendants' conduct.

9 **FOURTH CLAIM FOR RELIEF**

10 **(Clayton Act, Section 7, 15 U.S.C. § 18)**

11 **(against All Defendants)**

12 258. Songkick repeats and realleges each and every allegation of this Complaint
13 as if fully set forth herein.

14 259. The merger of Ticketmaster and Live Nation has had the effect of
15 substantially lessening competition and tending to create a monopoly in the relevant
16 market for artist presale ticketing services and concert venue ticketing services. Within
17 the last four years, Defendants began to put to use the assets they acquired in their
18 merger to new and anticompetitive purposes as herein alleged.

19 260. Defendants' conduct has had a substantial effect on interstate commerce as
20 herein alleged.

21 261. Songkick has been and will be injured in its business or property as a result
22 of the merger.

23 262. Songkick has suffered and will suffer injury of the type that the antitrust
24 laws were intended to prevent. Songkick has been and will be injured by the
25 substantial lessening of competition and tendency to create a monopoly as a result of
26 the merger.

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28

FIFTH CLAIM FOR RELIEF

(California Business & Professions Code, Section 17200)

(against All Defendants)

263. Songkick repeats and realleges each and every allegation of this Complaint as if fully set forth herein.

264. Defendants have engaged in unfair competition.

265. Defendants have engaged in unlawful and unfair business acts and practices.

266. Defendants have engaged in unlawful business acts and practices as herein alleged.

267. Defendants have engaged in unfair business acts and acts and practices, because their business acts and practices threaten an actual or incipient violation of antitrust laws, including but not limited to Sections 1 and 2 of the Sherman Act and Section 7 of the Clayton Act, violate the policy or spirit of those laws, or otherwise significantly threaten or harm competition.

268. Live Nation promoted, encouraged, aided, assisted, directed, and/or controlled Ticketmaster's conduct alleged above.

269. Songkick has suffered and will suffer injury in fact and has lost and will lose money or property as a result of Defendants' unfair competition.

SIXTH CLAIM FOR RELIEF

(Promissory Estoppel)

(against All Defendants)

270. Songkick repeats and realleges each and every allegation of this Complaint as if fully set forth herein.

271. As noted above, Defendants have repeatedly promised to honor artist presales, if the artist complies with the artificial, arbitrary, and unreasonable "fan club policy." This is a promise from Defendants upon which Songkick and its artist-clients have relied: "Our contract permits our clients, and with their consent the acts working

1 with them, to hold back tickets for legitimate promotional purposes with the
2 understanding that these tickets will not be sold to the general public by any other
3 ticketing provider.” As herein alleged, Defendants admitted that “under many written
4 agreements between promoters and our clients, the client often allocates certain tickets
5 for artist, promoter, agent and venue use and does not make those tickets available for
6 sale by us.” “During the course of dealings with our clients, we have come to
7 understand that some holdbacks must be tolerated by Ticketmaster so that they may
8 book high caliber acts at the events they promote.”

9 272. Through these statements and the distribution of their “fan club policy,”
10 Defendants thus made a promise to Songkick including not only the public statements
11 quoted above, but also in connection with the “fan club policy” distributed to the
12 industry. Defendants’ promises to allow Songkick to compete, albeit under artificial
13 constraints, were clear and unambiguous in their terms.

14 273. Defendants promised that, if Songkick complied with the literal terms of
15 the artificial fan club policy, Songkick would be entitled to provide artist presale
16 ticketing services, with respect to the 8% allotment of tickets that the artists are entitled
17 to presell and that there would be a “level playing field” between Songkick and
18 Defendant’s competing presales service.

19 274. Defendants’ promises were clear and unambiguous in their terms.

20 275. Songkick relied on those promises.

21 276. Songkick’s reliance was reasonable and foreseeable.

22 277. Songkick was injured by its reliance.

23 278. Defendants failed to do something that they promised to do.

24 279. Live Nation promoted, encouraged, aided, assisted, directed, and/or
25 controlled Ticketmaster’s conduct alleged above.

26 280. Injustice can be avoided only by the enforcement of Defendants’ promise.

27 281. As alleged above, there was no legitimate justification or procompetitive
28 reason for Defendants to impose their artificial, arbitrary, and unreasonable “fan club”

1 requirements on Songkick and other competitors as a condition for being able to
2 provide artist presale ticketing services. As a result of Defendant's predatory acts and
3 anticompetitive conduct described above, Songkick and other competitors were forced
4 to comply with Defendants' "fan club" requirements in order to be able to compete in
5 the market and to provide those services to their customers, the artists. Defendants
6 should not be permitted to continue to enforce their artificial, arbitrary, and
7 unreasonable "fan club" requirements, but at a minimum they should be required to
8 honor the public and direct promises they made to Songkick and other competitors for
9 complying with the "fan club" requirements.

10 **SEVENTH CLAIM FOR RELIEF**

11 **(Trade Secret Misappropriation in Violation of Cal. Civ. Code § 3426 *et seq.*)**
12 **(against All Defendants)**

13 282. Songkick repeats and realleges each and every allegation of this
14 Complaint as if fully set forth herein.

15 283. CrowdSurge's client-facing toolbox (and all financial, operational,
16 marketing, and customer and artist-client data contained therein); usernames and
17 passwords; Weekly Head of Department reports; Growth Summaries; financial
18 information (including but not limited to ticket sales, merchandise revenues, weekly
19 and quarterly profitability reports, forecasts, and cost and pricing data); customer
20 lists; systems; "stores," including "test sites" (and all operational, promotional, and
21 financial information contained therein) (together, CrowdSurge's "Confidential
22 Information") all constitute valuable trade information not generally known to the
23 public, and which derive actual and potential economic value independent from not
24 being generally known to the public.

25 284. CrowdSurge's valuable, non-public Confidential Information was
26 developed, collected, and organized by CrowdSurge through considerable time,
27 effort, and expense.

1 285. As Songkick discovered through documents recently produced in this
2 litigation, Defendants, through multiples employees, executives, officers, and/or
3 agents, willfully misappropriated CrowdSurge's Confidential Information by
4 acquiring it through one or more persons, including Stephen Mead and Zeeshan
5 Zaidi, who knew that the Confidential Information was acquired through improper
6 means. Those improper means include, but are not limited to, Mead's knowledge of
7 CrowdSurge's Confidential Information resulting from his prior employment at the
8 company, Mead's breach of his Separation Agreement—which prohibited him from
9 using and disclosing Confidential Information, and obligated him to return all such
10 information to CrowdSurge—and Zaidi's and others' encouraging Mead to share
11 CrowdSurge's Confidential Information with Defendants.

12 286. As Songkick discovered through documents recently produced in this
13 litigation, Defendants, through multiples employees, executives, officers, and/or
14 agents, further willfully misappropriated CrowdSurge's Confidential Information
15 because that information was disclosed and used, without CrowdSurge's consent, by
16 persons—including Defendants' executives—who knew or had reason to know that
17 the Confidential Information was derived through one or more persons, such as
18 Mead and Zaidi, who utilized improper means to acquire that Confidential
19 Information. Those improper means include Mead's former employment at
20 CrowdSurge, and Zaidi's (and others') encouraging Mead to share non-public
21 Confidential Information.

22 287. As Songkick discovered through documents recently produced in this
23 litigation, Defendants, through multiples employees, executives, officers, and/or
24 agents, further willfully misappropriated CrowdSurge's Confidential Information
25 because that information was disclosed and used, without CrowdSurge's consent, by
26 persons—including Defendants' executives—who knew or had reason to know that
27 it was acquired despite Mead's duties to maintain the secrecy of CrowdSurge's
28 Confidential Information and to return all Confidential Information to CrowdSurge.

1 288. CrowdSurge takes reasonable steps to ensure the secrecy of its
2 Confidential Information. CrowdSurge's client-facing toolboxes, which are not
3 disseminated to the public, are password-protected. Furthermore, CrowdSurge
4 required Mead to enter into a Separation Agreement expressly prohibiting him from
5 using or disclosing any and all of CrowdSurge's Confidential Information.

6 289. As a result of Defendants' misappropriation of Confidential
7 Information, Songkick has incurred losses, and Defendants have been unjustly
8 enriched, including but not limited to revenues resulting from various artists' tours
9 that CrowdSurge lost (following Ticketmaster's misappropriation of trade secrets)
10 and through Ticketmaster OnTour, which improperly cloned CrowdSurge's trade
11 secrets. The amounts of Songkick's losses and Defendants' unjust enrichment will
12 be proven at trial.

13 290. In addition, Defendants' willful misappropriation and continuing use of
14 CrowdSurge's Confidential Information has caused and is continuing to cause
15 Songkick irreparable harm, including the loss of customer goodwill and the
16 threatened loss of Songkick's proprietary trade secrets, for which no adequate
17 remedy exists at law.

18 291. Defendants' conduct therefore constitutes a violation of the Uniform
19 Trade Secrets Act, Cal. Civ. Code § 3426 *et seq.*, for which Songkick is entitled to
20 damages, injunctive relief, the value of Defendants' unjust enrichment (or, if not
21 provable, payment of a reasonable royalty), and, pursuant to Cal. Civ. Code §
22 3426.3(c), exemplary damages.

23 **EIGHTH CLAIM FOR RELIEF**

24 **(Trade Secret Misappropriation in Violation of New York Law)**

25 **(against All Defendants)**

26 292. Songkick repeats and realleges each and every allegation of this
27 Complaint as if fully set forth herein.
28

1 293. CrowdSurge’s client-facing toolbox (and all financial, operational,
2 marketing, and customer data contained therein); usernames and passwords; Weekly
3 Head of Department reports; Growth Summaries; financial information (including
4 but not limited to ticket sales, merchandise revenues, weekly and quarterly
5 profitability reports, forecasts, and cost and pricing data); customer lists; systems;
6 “stores,” including “test sites” (and all operational, promotional, and financial
7 information contained therein) (together, CrowdSurge’s “Confidential Information”)
8 all constitute valuable trade information not generally known to the public, and
9 which derive actual and potential economic value independent from not being
10 generally known to the public.

11 294. CrowdSurge’s valuable, non-public Confidential Information was
12 developed, collected, and organized by CrowdSurge through considerable time,
13 effort, and expense.

14 295. As Songkick discovered through documents recently produced in this
15 litigation, Defendants, through multiples employees, executives, officers, and/or
16 agents, willfully misappropriated CrowdSurge’s Confidential Information by
17 disclosing and using that information, without CrowdSurge’s consent, by persons—
18 including Defendants’ executives—who knew or had reason to know that it was
19 acquired through Mead’s violation of his Separation Agreement, which required
20 Mead to maintain the secrecy of CrowdSurge’s Confidential Information and to
21 return all Confidential Information to CrowdSurge.

22 296. As Songkick discovered through documents recently produced in this
23 litigation, Defendants, through multiples employees, executives, officers, and/or
24 agents, further willfully misappropriated CrowdSurge’s Confidential Information
25 because that information was disclosed and used, without CrowdSurge’s consent, by
26 persons—including Defendants’ executives—who knew or had reason to know that
27 the Confidential Information was discovered through one or more persons, such as
28 Mead and Zaidi, who utilized improper means to acquire that Confidential

1 Information. Those improper means include Mead's former employment at
2 CrowdSurge, and Zaidi's (and others') encouraging Mead to share non-public
3 Confidential Information.

4 297. CrowdSurge takes reasonable steps to ensure the secrecy of its
5 Confidential Information. CrowdSurge's client-facing toolboxes, which are not
6 disseminated to the public, are password-protected. Furthermore, CrowdSurge
7 required Mead to enter into a Separation Agreement expressly prohibiting him from
8 using or disclosing any and all of CrowdSurge's Confidential Information.

9 298. As a result of Defendants' misappropriation of Confidential
10 Information, Songkick has incurred losses, and Defendants have been unjustly
11 enriched, including but not limited to revenues resulting from various artists' tours
12 that CrowdSurge lost (following Ticketmaster's misappropriation of trade secrets)
13 and through Ticketmaster OnTour, which improperly cloned CrowdSurge's trade
14 secrets. The amounts of Songkick's losses and Defendants' unjust enrichment will
15 be proven at trial.

16 299. In addition, Defendants' misappropriation and continuing use of
17 CrowdSurge's Confidential Information (including through Ticketmaster OnTour)
18 has caused and is continuing to cause Songkick irreparable harm, including the loss
19 of customer goodwill and the threatened loss of Songkick's proprietary trade secrets,
20 for which no adequate remedy exists at law.

21 300. Defendants' conduct therefore constitutes a violation of New York's
22 trade secret misappropriation laws, for which Songkick is entitled to damages,
23 injunctive relief, the value of Defendants' unjust enrichment (or, if not provable,
24 payment of a reasonable royalty), and punitive damages.

25 **NINTH CLAIM FOR RELIEF**
26 **(Unlawful Access to a Protected Computer in Violation of the Computer Fraud**
27 **and Abuse Act, 18 U.S.C. § 1030)**
28 **(against All Defendants)**

301. Songkick repeats and realleges each and every allegation of this Complaint as if fully set forth herein.

302. As Songkick discovered through documents recently produced in this litigation, on one or more occasions, Defendants, through multiples employees, executives, officers, and/or agents, have intentionally accessed CrowdSurge's password-protected client-facing toolbox without authorization, and thereby obtained access to data transmitted by CrowdSurge's protected computer.

303. As Songkick discovered through documents recently produced in this litigation, Defendants, through multiples employees, executives, officers, and/or agents, intentionally and routinely accessed dozens of CrowdSurge “test sites” without authorization, and thereby obtained access to data transmitted by CrowdSurge’s protected computer.

304. Defendants have intentionally accessed CrowdSurge’s password-protected client-facing toolbox and “test sites” for their own commercial advantage and financial gain—including but not limited to Defendants’ efforts to revamp its Artist Services division and create a clone of CrowdSurge, Ticketmaster OnTour and has caused Songkick losses of not less than \$5,000, including but not limited to lost revenue.

305. In addition, Defendants' misappropriation and continuing use of CrowdSurge's password-protected client-facing toolbox and "test sites" has caused and is continuing to cause Songkick irreparable harm, including the loss of customer and goodwill and the threatened loss of Songkick's proprietary trade secrets, for which no adequate remedy exists at law.

306. Defendants' conduct therefore constitutes a violation of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030(g), for which Songkick is entitled to both damages and injunctive relief.

TENTH CLAIM FOR RELIEF

(Intentional Interference with Contractual Relations)

(against All Defendants)

307. Songkick repeats and realleges each and every allegation of this Complaint as if fully set forth herein.

308. As herein alleged, Defendants have intentionally interfered with the contracts (oral and written) between Songkick and artists and managers, including but not limited to the artists and managers previously identified by Songkick in answers to interrogatories and other communications with Defendants' counsel, as well as additional artists that Songkick will identify for Defendants pursuant to the parties' agreement to avoid publicizing artist names in public pleadings.

309. Songkick and the artists mentioned in the previous paragraph have had oral and/or written contracts.

310. Under those contracts, Songkick was entitled to provide artist presale ticketing and other services for each artist. In exchange, each artist agreed that Songkick would be paid the service fees it generated on the artist presale tickets it sold for the artist.

311. Defendants have known of those contracts.

312. Defendants have intended to disrupt the performance of those contracts.

313. Defendants' conduct has prevented and will prevent performance or has made and will make performance more expensive or difficult.

314. Live Nation promoted, encouraged, aided, assisted, directed, and/or controlled Ticketmaster's conduct alleged above.

315. Songkick has been and will be harmed.

316. Defendants' conduct has been and will be a substantial factor in causing Songkick's harm.

ELEVENTH CLAIM FOR RELIEF

(Intentional Interference with Prospective Economic Relations)

(against All Defendants)

1 317. Songkick repeats and realleges each and every allegation of this
2 Complaint as if fully set forth herein.

3 318. As herein alleged, Defendants have intentionally interfered with
4 prospective economic relationships between Songkick and artists and managers,
5 including but not limited to the artists and managers previously identified by
6 Songkick in answers to interrogatories and other communications with Defendants'
7 counsel, as well as additional artists that Songkick will identify for Defendants
8 pursuant to the parties' agreement to avoid publicizing artist names in public
9 pleadings. These prospective economic relationships probably would have resulted
10 in an economic benefit to Songkick.

11 319. Songkick and the artists and other live music industry participants
12 mentioned in the previous paragraph have had economic relationships that probably
13 would have resulted in an economic benefit to Songkick.

14 320. Under those relationships, Songkick probably would have been entitled
15 to provide artist presale ticketing and other services for each potential client. In
16 exchange, Songkick would have been paid the service fees it generated on the artist
17 presale tickets it sold for them.

18 321. Defendants have known of those prospective relationships.

19 322. Defendants have intended to disrupt those prospective relationships.

20 323. Defendants have engaged in wrongful conduct, including but not
21 limited to their violation of Sections 1 and 2 of the Sherman Act, Section 7 of the
22 Clayton Act, Section 17200 of the California Business and Professions Code, their
23 intentional interference with contractual relations, Section 3426 *et seq.* of
24 California's Uniform Trade Secret Act, New York's trade secret laws, and Section
25 1030 of Computer Fraud and Abuse Act.

26 324. Defendants' conduct has disrupted and will disrupt those relationships.

27 325. Live Nation promoted, encouraged, aided, assisted, directed, and/or
28 controlled Ticketmaster's conduct alleged above.

1 326. Songkick has been and will be harmed.

2 327. Defendants' wrongful conduct has been and will be a substantial factor
3 in causing Songkick's harm.

4 **PRAYER FOR RELIEF**

5 328. Wherefore, Songkick requests the following relief:

- 6 (a) Damages in an amount to be determined;
- 7 (b) Unjust enrichment;
- 8 (c) A reasonable royalty, if damages and unjust enrichment are not
9 provable, as provided by law;
- 10 (d) Treble damages;
- 11 (e) Attorneys' fees;
- 12 (f) Costs;
- 13 (g) Pre-judgment and post-judgment interest at the maximum rate
14 permitted under the law;
- 15 (h) Exemplary and punitive damages as provided by law;
- 16 (i) Injunctive relief, including but not limited to an injunction
17 barring Defendants' conduct alleged in the Complaint;
- 18 (j) Declaratory relief, including but not limited to a declaration and
19 judgment that Defendants' conduct alleged in the complaint violates the laws
20 alleged in the Complaint; and
- 21 (k) Such other and further relief as the Court deems proper and just.

22 **DEMAND FOR JURY TRIAL**

23 Pursuant to Rule 38(a) of the Federal Rules of Civil Procedure, Songkick
24 demands a jury trial as to all issues triable by a jury.

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1 DATED: February 16, 2017

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

2
3
4 By /s/ Frederick A. Lorig

5 Frederick A. Lorig

6 Kevin Y. Teruya

7 Adam B. Wolfson

8 Attorneys for Plaintiff

9 Complete Entertainment Resources LLC